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APPENDIX A

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The Statutes Involved

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(3) 49 United States Code Annotated, Sections 307(a) and (b) . . . 95

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(1) 49 United States Code Annotated, preceding §1 note, §301 note, §901 note, and §1001 note.

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

(2) 49 United States Code Annotated, Sections 17(4) and (5)

Powers of divisions, boards, etc.; effect of orders, etc.

(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under chapter 8 of this title, persons specified in section 305(e) of this title), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof.

(3) 49 United States Code Annotated, Sections 307(a) and (b).

§ 307. Issuance of certificate—Issuance authorized to qualified applicants for regular routes and between fixed termini

(a) Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

Certificate not to confer proprietary or property rights in highway

(b) No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways. Feb. 4, 1887, c. 104, Pt. II, § 207, as added Aug. 9, 1935, c. 498, 49 Stat. 551.

(4) 5 United States Code Annotated, Sections 556, 557 and 706.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplication of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 386.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554 (d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding

employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 387.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.

(5) 28 United States Code Annotated, Sections 2284 (1) and (5)

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 968; June 11, 1960, Pub.L. 86-507, § 1(19), 74 Stat. 201.

APPENDIX B

Report and Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served January 24, 1972, 114 M. C. C. 571

Served January 24, 1972

M-12267

INTERSTATE COMMERCE COMMISSION

No. MC-1124 (SUB-NO. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.[1]

Decided December 30, 1971

1. In No. MC-2229 (Sub-No. 132), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Texarkana, Ark., (2) between Jackson, Miss., and Atlanta, Ga.; and (3) between Meridian, Miss., and Tuscaloosa, Ala., subject to a restriction and certain conditions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
2. In No. MC-94201 (Sub-No. 56), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes generally extending (1) between Mobile, Ala., and Houston, Tex., (2) between Poplarville, Miss., and Baton Rouge, La.; (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59; (4) between Tuscaloosa, Ala., and Fort Worth, Tex.; (5) between Memphis, Tenn., and Topeka, Kans.; (6) between Memphis, Tenn., and Little Rock, Ark.; (7) between West Memphis, Ark., and Little Rock, Ark.; (8) between Little Rock, Ark., and Greenville, Miss.; (9) between Houston, Tex., and Dallas, Tex.; and (10) between Little Rock, Ark., and Texarkana, Tex., subject to a condition and certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
3. In No. MC-106401 (Sub-No. 18), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Fort Worth, Tex.; (2) between New Orleans, La., and Houston, Tex.; and (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., subject in parts (1) and (2) to certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

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[1] This report also embraces the eight applications identified in appendix A to this report. In the absence of exceptions, the recommended order with respect to the application of Roadway Express, Inc., in No. MC-2202 (Sub-No. 273), became effective by operation of law. By order entered December 18, 1969, McLean Trucking Company was substituted as applicant in No. MC-1124 (Sub-No. 26) in lieu of Herrin Transportation Company.

Retitled McLean Trucking Company Extension—Atlanta, Ga.

4. In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), public convenience and necessity found not shown to require the operations proposed. Applications denied.

Maurice F. Bishop, James B. Blair, W. T. Brunson, John P. Carleton, William A. Chestnutt, R. W. Collinsworth, David Crockett, Donald E. Cross, Douglas Faris, Leroy Hallman, William P. Jackson, Jr., Claude N. Knox, A. Alvis Layne, William E. Livingstone III, Donald B. Lockridge, Emmet McCaffery, Kim D. Mann, Charles D. Matthews, Carl L. Phinney, Jerry C. Prestridge, Ralph W. Pulley, Jr., Robert S. Richard, Harry G. Silleck, Jr., Thomas G. Sloan, Samuel W. Taylor, and *William O. Turney* for applicants, and for certain of the applicants as protestants to other applications.

M. Ward Bailey, Richard A. Bishop, Lennox O. Bowles, Homer S. Carpenter, Drew L. Carraway, James N. Clay III, Morris G. Cobb, John A. Crawford, Paul M. Daniell, Lewis B. Doggett, S. Earl Dove, James H. Epps III, Dan Felts, John S. Fessenden, Charles L. Ford, Jr., Robert W. Gerson, Charles O. Gillogly, Richard M. Gleason, Wentworth E. Griffin, Stephen L. Grossman, W. F. Goodwin, G. F. Gunn, Jr., Harold G. Hernly, Harold G. Hernly, Jr., John C. Henderson, Clifford E. Hillerby, Rollo E. Kidwell, B. W. Latourette, Jr., Leon E. Ledford, W. C. Mauldin, J. E. May, Harold D. Miller, Jr., James W. Nisbet, V. R. Oldenburg, Guy H. Postell, Sol H. Proctor, John M. Records, Lee Reeder, R. J. Reynolds, Jr., R. J. Reynolds III, Lloyd M. Roach, Phillip Robinson, Clifford E. Sanders, John Schwab, Alan E. Serby, Keith Y. Sharpe, S. E. Somers, Jr., Mert Starnes, Phineas Stevens, F. T. Stroud, Robert E. Tate, Frank W. Taylor, Jr., Eugene K. Walburn, and *Ed White* for protestants.

Winston M. Haythe, Courts Oulahan, and *Charles S. Rhyne* for interveners in support of the application in No. MC-106401 (Sub-No. 18).

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, DEASON, AND GRESHAM

The examiners recommended that the application of Floyd & Beasley Transfer Company, Inc., be denied. Although this applicant did not take exceptions to this recommendation, it was prevented from becoming effective by operation of law since the exceptions of other parties nominally embraced this proceeding. This application will be disposed of in our findings and order herein, but without further discussion.

DEASON, *Commissioner*:

These proceedings involve eight applications by the same number of motor common carriers to extend their general commodities operations to points generally in that portion of the United States west of Atlanta, Ga., Birmingham, Ala., and Pensacola, Fla., and east of Houston, Dallas, and Fort Worth, Tex. Bowman Transportation, Inc., seeks to extend its operation, in addition to points in the above-described area, to Topeka, Kans., and to Kansas City, Mo.-Kansas City, Kans. The authority sought in each application is fully described in appendix A to this report. With the exception of Deaton, Inc. (which requests irregular-route authority), each applicant has applied for regular-route authority which it proposes to join with the authority it presently holds. Generally speaking, four southwestern carriers (namely, Herrin, Red Ball, Strickland, and Jones) seek to extend their operations to Birmingham and Atlanta, while four southern carriers (viz. Deaton, Baggett, Bowman, and Johnson) would extend their authorized services to the Southwest. The numerous motor carriers described in appendix B oppose the applications.

These applications were heard on a consolidated record, involve what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission, and were the subject of a single report and recommended order by two examiners. The examiners recommended that all of the applications be denied. Exceptions to the order recommended by the examiners were filed by all of the applicants, except Roadway Express, Inc., and Floyd & Beasley Transfer Company, Inc. Exceptions were also filed by a number of shippers[1] intervening in support of the application of Johnson Motor Lines, Inc. Both the exceptions of Johnson Motor Lines, Inc., and the intervening shippers embrace a request for oral argument. Additionally, "conditional" exceptions were filed jointly by Campbell Sixty-Six Express, Inc., and Gordons Transports, Inc., protestants. Those protestants described in appendix C submitted replies to applicants' and interveners' exceptions.[2] Johnson Motor Lines, Inc., filed a reply to the above-described "conditional" exceptions and to the exceptions of other applicants; while Bowman

[1] By order entered March 30, 1970, 41 named petitioners were permitted to intervene in No. MC-10641 (Sub-No. 18), Johnson Motor Lines, Inc., Extension—Dallas, Tex., with the right to appear and participate in all further proceedings therein, and their jointly filed tendered exceptions were accepted for filing.

[2] As noted in appendix C, the reply by ET & WNC Transportation Company to the exceptions of applicants in Nos. MC-76[illegible] (Sub-No. 304) and MC-94201 (Sub-No. 56) was tendered late

Transportation, Inc., has tendered a late reply to the exceptions of Gordons Transports, Inc. Our conclusions differ in three of the embraced proceedings from those recommended by the examiners. The parties will sometimes hereinafter be referred to by appropriate short titles.

PLEADINGS

The contentions of the parties which filed the numerous exceptions and replies are set forth in appendix D. In general, of the eight applicants filing exceptions, two (Deaton and Baggett) filed "conditional" exceptions stating that a grant of their applications would be a necessary corollary to a grant of any of the other applications. They wish to avoid a situation in which their applications would stand finally denied while one or more of the other consolidated applications are pending final decision. Another applicant (Jones) asserts that it should receive at least a partial grant of authority since the record allegedly demonstrates a need for additional service on commodities requiring refrigeration, and it is willing to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature-controlled trailers. Applicant Bowman maintains that it should be granted the authority sought, or in the alternative (inasmuch as its proposal is divisible), that it should be granted authority to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Springfield, Carthage, and Kansas City, Mo. The remaining applicants (Herrin,* Johnson, Red Ball, and Strickland) contend generally that they should be authorized to provide the services as proposed.† Collectively, applicants except to the basic approach taken by the examiners in assertedly considering those applications on the erroneous concept that either all must be granted or all must be denied. It is averred that the examiners should have evaluated, and made findings and conclusions relating to, each application as a separate and independent matter; and that the supporting testimony should not be treated only in relation to the commodities shipped to the substantial exclusion of the territories and points involved. The intervening shippers, in general, maintain that an affirmance of the examiners' report would result in a monopoly, contrary to the

*As noted in footnote 1 in appendix A, Herrin has been merged into McLean Trucking Company. Although the latter has been substituted as applicant herein, the former's name will be used for the sake of continuity of discussion.

†It is noted that Red Ball indicates a willingness to have "Performance Report" conditions imposed on any grant of authority to it.

interests of business in the area served or proposed to be served by Johnson. In their jointly filed "conditional" exceptions Campbell and Gordons represent that the applications of Bowman, Baggett, Johnson, Red Ball, and Jones present problems with respect to the joinder of regular- and irregular-route service, and that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments.

Protestants, replying to applicants' and interveners' exceptions, maintain generally that the findings and recommendations of the examiners are fully supported by the evidence and should be affirmed. In separate replies to the jointly filed "conditional" exceptions of Campbell and Gordons, Johnson asserts that these carriers' contentions regarding joinder problems are without merit, and Bowman submits that its proposed restrictions are acceptable and that, inasmuch as it has applied for appropriate authority to convert its existing irregular-route authority, the issue of joinder problems is moot as to it.[7]

The evidence, the recommendations of the hearing examiners, and the pleadings have been considered. Inasmuch as no exception is taken to the examiners' summary of the evidence presented by the protestants as to their authorities, equipment, and operations, this portion of the examiners' report is hereby adopted and is set forth in appendix G to this report.

PRELIMINARY MATTERS

Johnson and the shippers intervening in support of its application request oral argument, citing the complexity of the case and its importance in terms of public interest as reasons. In reply to these requests, certain protestants[8] submit that the issues are not complicated and relate principally to a question of fact, and that the request for oral argument should therefore be denied. Inasmuch as the parties seeking oral argument have not shown either that it is required or that it would be beneficial in reaching our determination in these proceedings, this request is hereby denied.

[7] In a report and recommended order in No. MC-94201 (Sub-No. 86) served March 29, 1971, which became effective by operation of law on April 28, 1971, Bowman's application seeking the conversion of its irregular-route authority in its certificates Nos. MC-94201 and MC-94201 (Sub-Nos. 35 and 63) was granted. A certificate authorizing the corresponding regular-route operations was issued July [illegible], 1971, in Bowman's lead docket number.

[8] Mercury and East Texas in their joint reply to the exceptions of applicants and interveners, shippers, and Akers, Graswell, Campbell, Gordons, Roadway, I.I.M.E., Transport and Weston in their joint reply to the exceptions of Johnson.

The joint reply filed by certain protestants to Bowman's exceptions contains a renewed motion to strike appendixes A and B to exhibit 1985 on the grounds that such evidence represents improper rebuttal evidence and that the method of its preparation makes the data unreliable. We agree with the examiners' finding that the challenged appendixes constitute proper rebuttal to information and transit time studies presented by protestant with respect to certain of Bowman's interline services. We also concur in the examiner's conclusion that the objection as to the method of preparation of the questioned appendixes goes to their weight and not their admissibility. The examiners' ruling is hereby sustained.

The replies of applicant Bowman and protestant ET & WNC were both filed 1 day after the due date. Inasmuch as no party has been prejudiced by that delay and because their positions are entitled to full consideration in this decision, those late-tendered replies are hereby accepted for filing.

As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969); and *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties[1] to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations.

The interveners in support of Johnson's application in No. MC-106401 (Sub-No. 18) and applicant Bowman in No. MC-94201 (Sub-No. 56) have separately filed petitions requesting leave to supplement their exceptions, embracing tendered supplemental exceptions. A number of protestants have replied to these petitions, and request an opportunity to reply to the supplemental exceptions should they be accepted for filing.[2] Petitioners seek the acceptance

[1] Roadway, West Transcon, Holloway, T I M E, Consolidated, Akers, Yellow Freight, and Braswell.

Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Sala Motor Freight Line, Inc., and Terminal Transport Co., Inc.

[2] Replies to the petition in No. MC-106401, Sub-No. 18, were filed jointly by Mercury and East Texas, separately by Ryder, jointly by Akers, Braswell, Campbell, Gordons, Roadway Express, Inc., Roadway Express of Mississippi, Inc., T I M E, and Transcon. A reply to both petitions was filed by Jack Cole-Dixie Highway Company, while Mercury Freight Lines, Inc., and East Texas filed a joint reply to Bowman's petition in No. MC-94201, Sub-No. 56.

for filing of their supplemental exceptions on the grounds that certain economic pronouncements have urged that regulatory agencies should consider competition as a "critical factor" when performing their adjudicative functions, and that certain recent court and Commission decisions should be considered in determining the issues here involved. Generally, protestants reply that this Commission's General Rules of Practice do not permit the filing of supplemental exceptions; that the economic pronouncements are immaterial and irrelevant; and that, for the most part, the decisions cited were available when the original exceptions were filed. As pointed out by certain protestants, an earlier petition of several of the opposing parties to reopen this proceeding to submit evidence of authorities granted since the hearing was denied on the grounds that the examiners would take official notice of any Commission action and that no useful purpose would be served by adding these pleadings to this already voluminous record. Whereas we will take official notice of all pertinent evidence and Commission decisions, we see no reason to prolong the disposition of this proceeding and, therefore, the petitions will be denied and the tendered supplemental exceptions will be rejected.

APPLICANTS' EVIDENCE

Herrin holds regular- and irregular-route motor common carrier authority to transport general commodities in an area bounded generally on the north by Little Rock, Ark., Memphis, Tenn., and Atlanta, Ga., on the south by Houston, New Orleans, La., and Pensacola and Jacksonville, Fla.; on the west by Fort Worth, Dallas, and Waco, Tex.; and on the east by Savannah, Ga. Its authorized routes, which include service to numerous intermediate points, extend between (1) Houston and New Orleans through Orange, Tex.; (2) Houston and Dallas-Fort Worth; (3) Houston and Waco; (4) Dallas and New Orleans through Lufkin, Tex., and De Ridder, La., (5) Dallas and Monroe, La., through Shreveport, La., (6) Shreveport and New Orleans through Alexandria, La., (7) New Orleans and Baton Rouge, La.; (8) Shreveport and Memphis through El Dorado, Ark.; (9) El Dorado and Little Rock, and (10) New Orleans and Jacksonville, through Crestview, Marianna, Tallahassee, Pensacola, and Lake City, Fla., and numerous points in south Georgia, including Macon, Savannah, Valdosta, Thomasville, and Waycross.

Herrin's routes into Macon and Savannah extend along U.S. Highway 80 through Jackson, Miss., Montgomery, Ala., and Columbus, Ga., which points are traversed for operating convenience only. It operates between Memphis and Jacksonville, traversing (for operating convenience only) Tupelo, Miss., Birmingham, and Columbus. Herrin also holds authority to operate between Macon and Atlanta, limited to traffic moving to, from, or through Monroe, New Orleans, Baton Rouge, and Memphis, and further restricted against the transportation of traffic moving between Little Rock and Memphis, and their respective commercial zones, on the one hand, and, on the other, Atlanta and its commercial zone. Applicant has been granted alternate-route authority generally over Interstate Highways 85 and 20 and U.S. Highway 78 to and from Atlanta which eliminates the necessity of observing the Macon gateway on Atlanta Traffic.[1] This alternate-route authority is restricted to the transportation of shipments moving to, from, or through Monroe, Baton Rouge, or New Orleans. It now operates to or through Birmingham, Mobile, and Montgomery, Ala., Jackson, Columbus, Atlanta, and Pensacola. The last two points are service points.

Herrin maintains terminals at Houston, Beaumont, Dallas, and Waco, Tex.; Shreveport, Lake Charles, Lafayette, New Orleans, Baton Rouge, and Alexandria, La.; El Dorado; Memphis; and Jacksonville. Commission agency stations are maintained at Houma, Abbeyville, and Monroe, La.; Macon, Savannah, and Waycross, Ga.; and Pensacola. If its application is granted, it will establish terminals at Atlanta, Columbus, Birmingham, Mobile, Montgomery, and Jackson. Additionally, it will reestablish a terminal at Little Rock. Herrin operates 252 tractors (including 5 sleeper cabs), 441 trailers, and 225 trucks. It would add 41 tractors, 80 trailers, and 67 trucks to its fleet upon approval of this application.

By this application, Herrin seeks (1) to serve Birmingham, Mobile, Montgomery, Columbus, and Jackson as intermediate points on its presently authorized routes; (2) to remove the restriction on service at Pensacola to traffic moving through New Orleans; (3) to operate over all feasible routes between the territory it now serves, on the one hand, and, on the other, Atlanta; and (4) to remove the restriction against the transportation of traffic between Memphis and Little Rock, on the one hand, and, on the other, Atlanta.

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[1] See certificate No. MC-31389 (Sub No. 119) issued March 19, 1970.

Herrin introduced proposed operating schedules between Dallas, Houston, New Orleans, Memphis, Baton Rouge, and Shreveport, on the one hand, and, on the other, Atlanta, Birmingham, Columbus, Mobile, Montgomery, Jackson, and Pensacola. The schedules are based on a 41-mile per hour average running time. To illustrate, between Dallas and Atlanta (815 Herrin operating miles) and between Houston and Atlanta (813 operating miles), Herrin proposes first-afternoon service on volume traffic and second-morning delivery on less-than-truckload (LTL) traffic, with vehicle running times of 19 hours and 55 minutes, and 19 hours and 49 minutes, respectively. On volume shipments, it proposes first-morning service between Birmingham, Dallas, and Houston; first-afternoon between Columbus, Dallas, and Houston; first-afternoon between Dallas and Mobile; first-morning between Houston and Mobile; first-afternoon between Montgomery, Dallas, and Houston; and first-morning service between Jackson, Dallas, and Houston. On LTL traffic, Herrin proposes first-afternoon service between Birmingham, on the one hand, and, on the other, Dallas and Houston; second-morning between Columbus, on the one hand, and, on the other, Dallas and Houston; first-afternoon between Mobile and Dallas; first-morning between Mobile and Houston; second-morning between Montgomery and Dallas; and first-afternoon between Montgomery and Houston; and first-morning between Jackson, on the one hand, and, on the other, Dallas and Houston. Between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, New Orleans and Memphis, Herrin would offer first-morning service on truckload shipments. Applicant proposes the same service on LTL shipments between those points, except between Atlanta and New Orleans, which will be first-afternoon. First-morning service is proposed on both truckload and LTL traffic between Pensacola and New Orleans and first-morning service would be provided between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, Baton Rouge and Shreveport, on both LTL and truckload shipments, with the exception that service between Atlanta and Shreveport on LTL traffic will be second-morning. Points in Texas and Louisiana served by Herrin and not specifically named would receive 1-day later service than movements to or from New Orleans on LTL. The proposed schedules on volume shipments would be the same to other Louisiana and Texas points as that to and from Houston. The Arkansas points served by Herrin and not named specifically would be served 1 day later than Memphis on LTL and the same as

Memphis on volume shipments. Applicant would, at least initially, operate sleeper cabs between Atlanta and Dallas-Fort Worth. Between Atlanta and New Orleans, service would be provided either with sleeper cabs or by driver relay.

Red Ball holds motor common carrier authority to transport general commodities, with the usual exceptions,[1] over regular routes within a territory generally bounded by Denver, Colo., and Santa Fe, N. Mex., on the west; Mobile, Jackson, and Memphis, on the east; Kansas City and Denver, on the north, and Houston, New Orleans, and Mobile, on the south. Applicant's operations extend over regular routes generally (1) between Denver and Dallas, through Pueblo, Colo.; Clayton, N. Mex.; Amarillo and Wichita Falls, Tex.; Lamar, Colo., and Boise City, Okla.; (2) between Denver and Memphis through Oklahoma City, Okla., and Little Rock; (3) between Dallas-Fort-Worth and Houston; (4) between Houston, Dallas, Fort Worth, and Jackson, through Shreveport and Monroe; (5) between Dallas-Fort Worth and Memphis, Tenn., through Shreveport and Little Rock; (6) between Dallas-Fort Worth, on the one hand, and, on the other, Baton Rouge and New Orleans, through Shreveport; (7) between New Orleans, Baton Rouge, Jackson, and Memphis; (8) between Memphis and Kansas City, Mo.-Kansas City, Kans., through Little Rock and Fort Smith; (9) between New Orleans and Baton Rouge, on the one hand, and, on the other, Natchez, Vicksburg, and Jackson, Miss.; (10) between Memphis and Jackson, Vicksburg, Natchez, and Gulfport, Miss.; (11) between Dallas, Houston, Fort Worth, and Mobile, through Shreveport, Monroe, and Jackson, and also through Baton Rouge and New Orleans; (12) between New Orleans and Baton Rouge, on the one hand, and, on the other, Kansas City, Mo.-Kansas City, Kans.; and (13) between Houston and New Orleans through Baton Rouge, Lake Charles, and Beaumont. Approximately 1,450 points in 10 States (not including Kansas City, Kans., and applicant's explosive authority to Pensacola, Fla.) are served direct by Red Ball. The points include approximately 550 in Texas, 475 in Louisiana, and 125 in Arkansas.

Ninety-two terminals are maintained by applicant throughout its system, with 44 located in Texas, 17 in Louisiana, 8 in each of Arkansas and Colorado, 6 in New Mexico, 4 in Mississippi, 2 in Oklahoma, and 1 each in Missouri, Tennessee, and Alabama. If the application is granted, Red Ball proposes to establish terminals at Atlanta, Birmingham, and Greenville, Miss. It operates 654 tractors

[1] Red Ball is, however, authorized to transport explosives

and 1,520 trailers, including 23 convertavans and 47 refrigerated, 20 insulated, and 40 open-top trailers; and it will add to its fleet if necessary.

Red Ball proposes to extend its authority (1) between Texarkana and Greenville, Birmingham, and Atlanta; (2) between Jackson and Atlanta, and (3) between Meridian, Miss., and Tuscaloosa, Ala., for the purposes of joinder only, restricted against transportation between Memphis and its commercial zone, on the one hand, and, on the other, Greenville, Birmingham, or Atlanta, and the respective commercial zones of each. The authority sought, if granted, will be tacked so that applicant would be able to provide service between Atlanta, Birmingham, and Greenville, on the one hand, and, on the other, its authorized points (except between Greenville and Memphis).

On LTL traffic, Red Ball proposes next-morning service between Dallas-Fort Worth and Greenville; between Texarkana and Shreveport, on the one hand, and, on the other, Birmingham and Greenville; between New Orleans and Baton Rouge, on the one hand, and, on the other, Greenville; between Baton Rouge and Birmingham; between Monroe and Little Rock, on the one hand, and, on the other, Birmingham and Greenville; between Jackson, on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; and between Atlanta and Birmingham. Second-morning service is proposed from Denver to Greenville; between Texarkana and Amarillo, Tex., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; between Dallas-Fort Worth, on the one hand, and, on the other, Atlanta and Birmingham; between Shreveport and Atlanta; between New Or'eans, on the one hand, and, on the other, Atlanta and Birmingham; between Baton Rouge and Atlanta; between Monroe and Atlanta; and between Little Rock and Atlanta. And, third-morning service is proposed between Denver, on the one hand, and, on the other, Atlanta and Birmingham; and from Greenville to Denver. The schedules would involve an additional day for service at points beyond the above-described terminals. Truckload traffic will be handled on a call-on-demand basis. Applicant's proposed schedules are based on an average over-the-road speed of 40 miles per hour. Single-driver operations and two-man teams will be used between Denver, Amarillo, Dallas, Fort Worth, Texarkana, and Shreveport, on the one hand, and, on the other, Birmingham and Atlanta. Red Ball purposes 17 westbound schedules, 18 eastbound, 1 northbound (from New Orleans and Baton Rouge to Greenville), 1 southbound (from Greenville to Baton Rouge

and New Orleans), and 1 schedule between Jackson and Greenville.

Deaton holds irregular-route motor common carrier authority to transport specified commodities. It is authorized, under its general-commodity authority, to transport traffic (1) between Birmingham and points in Alabama within 65 miles thereof, on the one hand, and, on the other, New Orleans and points in Mississippi; and (2) between Atlanta, on the one hand, and, on the other, eight specified Alabama points which are located within 65 miles of Birmingham, restricted against the transportation of traffic between Atlanta and Birmingham. Its general-commodity authority has been converted from irregular-route to regular-route authority. Under its remaining authority it transports specified commodities generally between points in Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Applicant maintains terminals at Atlanta, Birmingham, Mobile, and Anniston, Ala.; Columbus, Greenville, Tupelo, Jackson, and Natchez, Miss.; New Orleans; Memphis; and Tampa, Fla. It proposes to establish terminals at Dallas, Houston, Beaumont, Monroe, Baton Rouge, and Shreveport. A substantial fleet of equipment is operated by applicant, and if its application is granted Deaton would add 20 tractors and 40 trailers.

Deaton proposes to tack the authority sought with some of its existing authority and render a call-on-demand service with an anticipated transit time of 2 days from Houston and Beaumont to points in Georgia and Alabama. Volume traffic tendered at a certain time of day, handled by a two-man operation, might be delivered by the first afternoon. Some of the LTL traffic, also handled by a two-man operation, would be delivered on either the second day or third morning. Between Atlanta, Anniston, and Birmingham, on the one hand, and, on the other, Monroe, Shreveport, and Baton Rouge, La., and Orange, Beaumont, Texas City, and Houston, Tex., truckload traffic would be delivered in 1 day and LTL traffic would receive 2-day service. From Atlanta to Dallas and Fort Worth, volume traffic would be delivered on the next afternoon and LTL traffic would be delivered on either the second day or third morning. Deaton believes that the traffic it presently interlines would support one schedule of LTL traffic a day from Atlanta to Monroe, Dallas, and Fort Worth and one a day from Birmingham and Anniston to the Baton Rouge and Houston areas.

Strickland holds regular-route motor common carrier authority to transport general commodities over a network of routes extending

between the Northeast, the Midwest, and the Southwest. Its regular routes in portions of Texas, Arizona, and Louisiana extend to the major points of Memphis, St. Louis, Mo.; Milwaukee, Racine, and Kenosha, Wis.; Aurora, Joliet, and Chicago, Ill.; Detroit, Mich.; Cleveland, Ohio; Philadelphia, Pa.; Camden, Atlantic City, and South Kearney, N.J.; New York, N.Y.; Bridgeport, Orange, New Haven, and Hartford, Conn.; and Springfield and Boston, Mass. Applicant maintains 35 terminals including those located at Shreveport and Texarkana. If its application is granted, terminals would be established at Atlanta, Birmingham, Jackson, Monroe, and Greenville. It operates 458 tractors, about 1,055 trailers, and 190 trucks.

Strickland seeks authority (1) between Atlanta and Texarkana, over a specified route, serving Birmingham, Greenville, and those points on U.S. Highway 82 in Arkansas, as intermediate points, and (2) between Atlanta and Shreveport, over a specified route, serving Jackson as an intermediate point and Monroe as a point of joinder. The proposed routes would permit service between Atlanta, Birmingham, and Jackson, on the one hand, and, on the other, Strickland's presently authorized points in Arkansas, Mississippi, Louisiana, and Texas through Monroe, Shreveport, and Texarkana.

Numerous schedules to and from the involved major points are proposed by Strickland. All of the schedules propose either 1- or 2-day service. To illustrate, a schedule proposed under route 1 (viz. between Atlanta and Texarkana) would leave Atlanta at 8 p.m., traverse 639 miles at 38 miles per hour, and arrive in Texarkana at 12:50 p.m. of the next day. Another example would be schedule 1017, under route (2) between Atlanta and Shreveport, which would leave Atlanta at 8 p.m., traverse 808 miles in 21 hours and 15 minutes, and arrive in Dallas-Fort Worth at 5:15 p.m. the following day, with second-day delivery expected. The proposed schedules will be performed by two-man teams with sleeper cabs and are direct terminal-to-terminal operations without intermediate stops, with the exception of the pedal run between Greenville and Texarkana.

Strickland introduced two abstracts of shipments transported by it in interline service during March 1965. The first, appendix H to exhibit 38, covers 887 shipments weighing a total of 731,892 pounds, which originated at points in Texas, were transported by Strickland from specified Texas points (mostly Dallas), to Memphis, Shreveport, St. Louis, Little Rock, and New Orleans, where they were interlined for delivery to points in Alabama, Florida, Georgia, Mississippi, North and South Carolina, and Virginia. Approximately 250 of these shipments were originated by a carrier other than Strickland and

interlined to the latter at Dallas or another specified Texas point. Applicant here proposes to transport these shipments from the Texas points directly to Atlanta. The second, appendix I to the same exhibit, covers 1,942 shipments weighing a total of 1.4 million pounds which originated at points in Alabama, Florida, Georgia, Mississippi, and North and South Carolina. They were interlined to Strickland at Memphis (approximately 1,850 of the shipments), Little Rock (34), or New Orleans (58), and were transported by applicant to points in Arkansas, Texas, and Louisiana. Approximately 650 such shipments were again interlined for delivery to their ultimate destination points. The average elapsed time from the origin carriers' billing date to the time of Strickland's billing date on 1,855 of these shipments was 3.6 days.

Baggett holds motor common carrier authority to transport general commodities, with certain exceptions, (1) over regular routes which extend generally between Chattanooga, Tenn., Rome, Atlanta, and Columbus, Ga., Florence, Decatur, Birmingham, Montgomery, and Mobile, Ala., and New Orleans, La.; and (2) over irregular routes from Montgomery, Ala., to points in Alabama within 125 miles of Montgomery. It also holds authority to transport explosives between, from, and to specified points and areas in 44 States and the District of Columbia, and specified commodities generally between, from, and to points in Alabama, Florida, Georgia, New Jersey, New York, Pennsylvania, and Tennessee. Additionally, a wholly owned subsidiary and a carrier under common control with applicant hold certain interstate authority.

Baggett maintains 20 terminals, 14 of which are located in Alabama. It proposes to establish terminals at Dallas-Fort Worth, Houston, and Beaumont. With its subsidiary, applicant operates 353 tractors, 856 trailers, and 220 trucks, including tractors used in local service.

Applicant proposes second-morning delivery from Chattanooga, Tenn., Atlanta, Birmingham, and Mobile to Fort Worth, Dallas, and Houston, with dropoffs at Beaumont. An additional day will be required on movements from Baggett's other terminal points.

Bowman holds both regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions) generally from, to, and between points in a territory bounded by Chicago, Ill., and points within 35 miles of Columbus Circle, N.Y., on the north; Miami and Pensacola, Fla., and Mobile, on the south; Memphis and Tuscaloosa, Ala., on the west; and points along the eastern seaboard. Its irregular-route authority to

serve generally points in Florida, Alabama, Georgia, South and North Carolina, Tennessee, Maryland, Illinois, Indiana, and Ohio has been converted to corresponding regular-route authority.[1] As here pertinent, applicant was granted authority to operate over 71 specified routes, the western termini of which are Memphis, Tuscaloosa, Montgomery, and Mobile.

Bowman maintains 25 terminals, most of which are located in the Southeast, including those located at Atlanta, Birmingham, Memphis, Mobile, Montgomery, and Pensacola. It proposes to establish terminals at New Orleans, Baton Rouge, Lake Charles, Shreveport, and Monroe, La.; Beaumont, Houston, Dallas-Fort Worth, Marshall, and Texarkana, Tex.; Vicksburg, Jackson, Meridian, and Greenville, Miss.; El Dorado, Little Rock, Fort Smith, and Jonesboro, Ark.; and Springfield, Carthage, and Kansas City, Mo. Agency stations will be established at Topeka, Kans., Laurel, Miss., and Tuscaloosa, Ala. Its fleet consists of 478 tractors, including 359 sleeper cabs, and 978 trailers. If the application is granted, applicant will add 100 tractors, 100 trucks, and 200 trailers.

By this application, Bowman seeks to extend its operations over a series of regular routes between its present terminal points at Memphis, Atlanta, Birmingham, Montgomery, Mobile, and Pensacola to serve 8 points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas. It does not seek authority to serve between any points west of its presently authorized points. Also, Bowman does not propose to handle traffic originating or interlined at Memphis and moving to Dallas, Fort Worth, or other points in the territory it seeks to serve. However, it indicates that it will handle shipments through Memphis which originate and are received by applicant at points east of Memphis.

Bowman's proposed LTL schedules are based on a 35-mile per hour average over-the-road running time and take into consideration the time required for handling traffic at its terminals. Applicant operates over the highways on weekends, and proposes to use two-man teams with sleeper cabs on all movements between points requiring more than 10 hours driving time. It proposes to render 1- or 2-day service generally between Chattanooga and

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[1] See footnote 8, *supra*. Also, in August 1968, Bowman acquired a portion of the operating rights of Alabama Highway Express which included, among other authorities, the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. See MC-F-9921, *Bowman Transportation, Inc.—Purchase (Portion)—Alabama Highway Express, Inc.*, not printed, decided July 8, 1968.

Memphis, Tenn., and Birmingham, Gadsden (located 50 miles east of Birmingham), Montgomery, and Mobile, Ala., on the one hand, and, on the other, points in the territory it seeks to serve. Applicant introduced exhibits showing that on the 546 shipments moving from its Miami to its Atlanta terminals (744 operating miles) during a specified 1-week period in 1966, the average transit time was 1.9 days; that on the 321 shipments moving from its Birmingham terminal during the same period and delivered or interlined at Charlotte (408 operating miles), the average transit time was 1.5 days; that on 206 shipments moving from its Richmond, Va., terminal to its Memphis terminal (855 operating miles) during the same period, the average transit time was 2.5 days; and that on 26 shipments handled from Birmingham to New York, N.Y. (1030 operating miles) during the 1-week period, the average transit time was 2.8 days.

Johnson holds regular- and irregular-route motor common carrier authority to transport principally general commodities, with the usual exceptions. Its regular routes extend between points in a territory bounded by Boston and Worcester, Mass., and Niagra Falls, Oswego, and Glen Falls, N.Y.,[16] on the north, and Pensacola, Mobile, Pascagoula and Gulfport, Miss., and New Orleans, on the south, generally by way of Providence, R.I., Hartford, Conn., New York, N.Y., Camden, N.J., Philadelphia, Baltimore, Md., Washington, D.C., Richmond, Charlotte, N.C., Atlanta, and Montgomery. Applicant's irregular-route general-commodity authority extends generally to points in New York, New Jersey, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and Florida. As here pertinent, applicant holds irregular-route authority to transport general commodities (with the usual exceptions) between Graniteville and Charleston, S.C., on the one hand, and, on the other, points in South Carolina and Georgia (except between Graniteville and Atlanta). Irregular-route authority to transport specified commodities from, to, and between points in Massachusetts, Rhode Island, Connecticut, and New York is also held by applicant.

Applicant maintains about 35 terminals at principal points on its routes and in its irregular-route territory, including those located at New Orleans, Gulfport, Mobile, Pensacola, Montgomery, Atlanta, Savannah, and Charlotte, its home office and main break-bulk

[16] Review Board Number 5, by order entered December 18, 1970, in No. MC-F-11006, *Johnson Motor Lines, Inc.—Merger—Johnson Motor Lines Corp.*, authorized the merger of the operating rights and the property of Johnson Motor Lines Corp. into Johnson Motor Lines, Inc. The merged operating rights are set forth in certificate No. MC-106401 (Sub-No. 31), issued July 19, 1971

terminal. Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport. Applicant operates approximately 500 tractors and 1,000 trailers, including 44 temperature-controlled vehicles, and it will add 50 tractors and 100 trailers to its fleet if its application is granted.

Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route. The stated purpose of the proposal is to permit service of an "over-head" nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes. No service is proposed between points on the southern route and points on the northern route. Applicant indicates that it will offer daily, scheduled, LTL service between Dallas and Savannah, by tacking its above-described irregular-route authority with its regular-route authority at Graniteville. Johnson also seeks authority to operate over two alternate routes. It is submitted that one (which is between Shreveport, a point on the northern route, and Baton Rouge, a point on the southern route) would enable applicant to move its empty equipment from the northern route to the southern route to pick up traffic from the Pascagola, Mobile, and Pensacola area. The other (which is between Montgomery and the junction of U.S. Highways 11 and 80 near Cuba, Ala.) would enable applicant, on its northern route, to move eastbound traffic from Dallas through Montomery and Opelika, Ala., making pickups at these two points, and then proceeding to Atlanta.

Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by applicant mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area, from and to points in North Carolina, Wallace, S.C., and points north and east thereof, will break bulk at Charlotte, and move by

two-man teams[1] on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points. Traffic moving to and from points on the southern route and applicant's present terminals of Gulfport, Pascagoula, Mobile, and Pensacola will be handled by schedules originating and terminating in Mobile and Pensacola. Two-man teams will handle the schedules originating and terminating at Mobile, which traffic will move between Pascagoula and Gulfport and the proposed terminals at Beaumont and Houston. A single driver will handle the schedule originating and terminating at Pensacola on the traffic moving to and from Mobile, Pascagoula, and Gulfport, and to and from Baton Rouge. The Mobile schedule will be dispatched through Pascagoula and Gulfport to pick up en route and deliver at Beaumont en route to Houston. Eastbound, the Houston schedule will be dispatched through Beaumont to pick up en route and will stop en route to Mobile at Gulfport and Pascagoula to deliver. The Pensacola schedule will be dispatched through Mobile, Pascagoula, and Gulfport to pick up en route and then proceed to Baton Rouge where it will terminate. Applicant proposes 17 westbound schedules (each schedule representing 1 vehicle) from Charlotte and 7 westbound from Atlanta daily, 5 days a week (excluding holidays). Eastbound, nine schedules would move daily to Charlotte and four would move to Atlanta. One westbound vehicle would be dispatched from Mobile and one from Pensacola. Eastbound, one vehicle would be dispatched from Houston to Mobile and one from Baton Rouge to Pensacola. Additionally, applicant proposes dispatched movements, which are not set up as daily schedules, to handle overflow freight from Charlotte and Atlanta to points on the proposed northern and southern routes. Thus, not including the two above-described dispatched movements from Charlotte and the two from Atlanta, applicant proposes 41 schedules daily, namely: 17 from Charlotte, 7 from Atlanta, 1 from

[1] On March 13, 1966, the change in Johnson's operations to include two-man operations became effective. Applicant introduced a summary of a survey of two-man operations between Charlotte, on the one hand, and, on the other, Pensacola, Mobile, Pascagoula, Gulfport, and New Orleans. Between January 2 and January 26, 1966, applicant's two-man teams made 253 trips between the above-described points in a total of 4,491 hours over 176,115 miles for an overall average of 39.21 miles per hour.

Pensacola, 1 from Mobile, 9 eastbound to Charlotte, 4 eastbound to Atlanta, 1 eastbound out of Houston to Mobile, and 1 eastbound out of Baton Rouge to Pensacola.

Originating and delivering traffic only between Monday and Friday (excluding holidays), applicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve. The 1-day service would generally be rendered only on either the "Express" schedules over the southern route or between Baton Rouge and applicant's southernmost terminals (except New Orleans). To illustrate Johnson's proposal, a shipment moving from Medford (Boston), Mass., over Charlotte to Houston would depart from Medford at 9 p.m. on a Monday and arrive at Charlotte at 9:30 p.m. of the following day. At 33.3 miles per hour, the 816 miles between these terminals would be traversed in 24.5 hours. Four hours would be allowed for break-bulk operations at Charlotte and departure from Charlotte would occur at 1:30 a.m. Wednesday. The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour. Thus, the movement would arrive in Houston at 4:30 a.m. on Thursday.

Jones holds regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions), and specified commodities, including frozen and prepared foodstuffs. Its regular routes extend generally between points within a territory bounded, on the north, by Kansas City and Chicago; on the south by Dallas-Fort Worth and Greenville and Winona, Miss.; on the west by Oklahoma City, Okla., and Wichita, Kans.; and on the east by Memphis. Applicant presently traverses a portion of the proposed routes, viz, generally between Winona and Texarkana, from Winona over U.S. Highway 82 to Texarkana; between Texarkana and Dallas, from Texarkana over U.S. Highway 67 to Dallas; and between Texarkana and Sherman, over U.S. Highway 82. Jones' irregular-route authority generally authorizes the transportation of general commodities within portions of this same area. Applicant maintains 24 terminals including 6 in each of Arkansas and Oklahoma, 3 in each of Mississippi and Missouri, 2 each in Texas and Kansas, and 1 each at Chicago and Memphis. Additional terminals will be established at Atlanta, Birmingham, El Dorado, and Texarkana, Ark. Its equipment consists of 310 tractors, 120 trucks, and 636 trailers, including 111 equipped with mechanical refrigeration. If the application is granted, 10 tractors and 20 trucks will be added to Jones' fleet.

Jones proposes to serve (1) between Atlanta and Texarkana over a specified route, serving the intermediate points of Birmingham, Greenville, and those on U.S. Highway 82 in Arkansas; between Texarkana and Sherman over a specified route, serving all intermediate points; between Texarkana and Dallas over a specified route, serving all intermediate points; and between Birmingham and Memphis serving no intermediate points. The proposals are restricted against the handling of traffic to or from Memphis and its commercial zone, on the one hand, and, on the other, points east of the Mississippi River.

Applicant would render overnight service to and from Birmingham and Atlanta, on the one hand, and, on the other, those points served in northeast Arkansas and southeast Missouri, points on U.S. Highway 70 between Memphis and Little Rock (including Little Rock), the Mississippi River Delta area, and points on U.S. Highway 82 as far west as El Dorado. The remaining territory Jones serves would receive second-morning service on LTL traffic moving to and from Atlanta and Birmingham. Volume shipments will receive next-day service up to 800 miles. LTL shipments between Birmingham and Atlanta, on the one hand, and, on the other, St. Louis, Mo., would receive second-morning service and truckload shipments would receive overnight service.

Jones proposes one schedule initially from Atlanta which would stop at Memphis for a relay of drivers and thence move to Springdale, Ark., for break bulk and delivery to local areas and transfer to units moving to the terminals of Springsfield and Joplin, Mo., Muskogee, Okla., and Wichita, Kans. In the reverse direction, shipments will move from those points at 10 a.m. and will be relayed through Memphis for delivery to Atlanta on an overnight basis. Another schedule will move between Atlanta and Memphis which will be coordinated with schedules between Memphis and Jonesboro and Little Rock, Ark., allowing for overnight service between these Arkansas points and Atlanta. A schedule is proposed between Memphis and Birmingham with a transfer providing for overnight and second-morning service from Atlanta. Another schedule would move between Atlanta and Greenville with pickups and dropoffs at Birmingham. At Greenville and Memphis, shipments would be combined with the other schedules and would be dispatched along with the present dispatching system of Jones on an overnight basis between Greenville and Dallas and Sherman and between Memphis and other major terminals. Although Jones proposes to use driver relays, it indicates that if two-man, sleeper-

cab operations prove beneficial, they will be used. Jones' schedules are based on a 40-mile per hour average running time which includes intermediate stops for rest and meals. The schedule between Atlanta and Fort Worth-Dallas would stop for combining at Greenville and proceed from Greenville to Dallas-Fort Worth the next evening, with about a 10-hour layover at Greenville on LTL traffic. It would leave Atlanta at 7 p.m., make a pickup at Birmingham, and arrive in Greenville at 6 a.m. the following morning. The schedule would leave Greenville about 10 hours later for Dallas-Fort Worth and make a dropoff at Texarkana. Traffic between Greenville and El Dorado would be handled separately from the through sechedules. Jones hopes to interline perishable products from Florida with Ryder at Atlanta, which traffic Jones cannot now interchange at Memphis because of the length of time involved in the Jones' refrigerator unit being off its line.

Each of the applicants is financially and otherwise fit and able properly to conduct the proposed services.

SUPPORTING EVIDENCE

Nine hundred and thirty-three witnesses—collectively representing shippers, receivers, 4 transportation consultants, 12 motor carriers which wish to interline, chambers of commerce, and port authorities—testified in support of the applications. The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a georgraphic basis. We have accordingly restated the supporting evidence in appendix E to this report. Those shippers which support only Roadway or Floyd & Beasley, applicants which did not file exceptions to the recommended denial of their respective applications, are neither discussed in the appendix, nor included in the statistical data below. Roadway has since acquired control of much of the authority it sought herein and can now generally serve the shippers which supported its application. The shippers which supported Floyd & Beasley are located generally in the same territory as those treated in appendix E and their evidence, although not specifically discussed herein, has

been considered. As a consequence, the evidence presented by 824 supporting witnesses is summarized in appendix E and below.

Generally, the involved traffic moves (1) between points in the Southwest, on the one hand, and, on the other, points in the Southeast, Middle Atlantic, and New England States; (2) between points in the Midwest, on the one hand, and, on the other, points in the East and Southeast; and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississipi. It consists of an exteremely wide variety of commodities (the examiners catagorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture.

As indicated above, the shippers[1] are listed geographically in appendix E according to the location of their facilities at which they receive or from which they ship the involved traffic. When a shipper has facilities in more than one State, it has been listed more than once, except when the involved movements are between its own facilities. Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest;[2] 340 shippers in the Southeast,[3] 44, collectively, in the Middle Atlantic and New England States;[4] and 42 in the Midwest.[5]

In addition to shipper evidence in support of its application, Johnson submitted an economic study prepared by the chairman of the Department of Transportation, University of Houston. The study develops the theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth. In this respect it is noted, as set forth in appendix F, that on

[1]The term "shippers," as used herein, represents the witnesses which appeared in support of the applications. It is noted that sometimes more than one witness appeared for the same shipper, that the same witness may have appeared and been counted more than once, and that some of the witnesses do not represent shippers in the strict sense of the word.

[2]Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas.

[3]Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia.

[4]Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island.

[5]Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri.

the whole the population in the States in which supporting shippers are located (except Mississippi), has increased substantially between 1960 and 1970.

Southwest.—The 84 Arkansas shippers collectively have facilities at 83 points in this State, with the greatest concentration of shippers at Fort Smith (9), El Dorado (8), Fayetteville (8), Little Rock (8), and Springdale (8).[1] Of the six shippers with facilities in Colorado, three are located at Denver, two at Colorado Springs, and one at Littleton. The 84 Louisiana-based shippers have facilities at 29 points, with most located at Baton Rouge (19), Shreveport (14), New Orleans (11), and Monroe (8).[2]

The one shipper with facilities in New Mexico states that, in addition to having stores in this State, it has a warehouse at Albuquerque, N. Mex. Of the 32 shippers with facilities in Oklahoma, 16 are located at Tulsa, 9 at Oklahoma City, 5 at Muskogee, and 1 at each of the points of Spiro, Stigler, Stillwell, Tahlequah, and Westville. Also, two shippers indicate that they have stores located in Oklahoma.[3] The 275 supporting Texas shippers collectively have facilities at 55 points in this State. One hundred and thirty-two shippers have facilities at Dallas (which includes the Dallas Chamber of Commerce); 57 at Houston, and 20 at Fort Worth.[4]

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[1] With respect to the remaining Arkansas points, one shipper is located at Ashdown, three at Bentonville, one at Blytheville, one at Cabot, three at Camden, five at Conway (including one motor carrier), three at Crossett, two at Gravette, three at Hamburg, one at Hiwassee, two at Hope, one at Lincoln, one at Lowell, three at Magnolia, one at Marked Tree, one at Osceola, one at Pine Bluff, one at Rector, two at Rogers, two at Russellville, three at Searcy (including one motor carrier), one at Sheridan, six at Siloam Springs, three at Texarkana (including the chamber of commerce thereof), and one at Van Buren. Two Arkansas shippers [11.(240) and 25.(452)] indicate that they have a number of stores in this State. Considering Arkansas shipper 11.(240), it should be noted, as is described in footnote 1 of appendix E, that the number 11 indicates that this is the 11th witness, in order of appearance, which has facilities in Arkansas, and that the number in the parenthesis is the witness number used by the examiners.

[2] The number of shippers located at Shreveport and Monroe includes one motor common carrier which wishes to interline at both of these points. The remaining Louisiana shippers are located at Abbeville (1), Addis (1), Alexandria (2), Alpine City (2), Bastrop (1), Bossier City (3), Golden Meadow (1), Haynesville (1), Houma (1), Kenner (1), Lafayette (5), Lake Charles (3), including the harbor and terminal district, Lockport (1), Mansfield (1), Morgan City (1), Opelousas (1), Pineville (1), Rayne (1), Ruston (1), St. Francisville (1), Springfield (1), Supreme (1), Thibodeaux (1), West Monroe (3), and Zachary (1). Three Louisiana shippers, viz. 7.(240), 22.(452), and 83.(917) indicate that they have stores located at numerous points in Louisiana.

[3] See shippers 2.(452) and 26.(828) under the Oklahoma heading. The latter also has a warehouse at Oklahoma City, Okla.

[4] Additionally, seven shippers have facilities at Texarkana (which includes the chamber of commerce thereof), six at both San Antonio and Tyler; five at both Amarillo and Wichita Falls; four at both Arlington and Greenville; three each at Garland, Graham, and Grand Prairie; two each at Bonham, Jasper, Nacogdoches, Paris, and Sulpher Springs; and one at each of the points of Austin, Baytown, Beaumont, Breckenridge, Bryan, Clarksville, Cleburne, Corpus Christi, Denison, Electra, Everman, Ferris, Floresville, Hearne, Irving, Itasca, Jacksonville, Kamay, (footnote continued on next page)

Southeast.—Of the 84 supporting shippers located in Alabama, 46 have facilities at Birmingham;[27] 8 at Montgomery (including a motor common carrier which wishes to interline); 5 at Mobile; 4 at Gadsden; 3 at each of the points of Decatur, Tuscaloosa, and Pelham; 2 at each of the points of Bessemer, Huntsville, and Scottsboro; and 1 at each of the points of Boaz, Brent, Centre, Cullman, Florence, Jackson's Gap, Leeds, Prattville, Springville, Union Springs, Uniontown, and West Gate. The 15 supporting shippers located in Florida have facilities at Miami (9), Pensacola (6), Lakeland (1), and Orlando (1). Most of the 114 shippers with facilities in Georgia are located at Atlanta (87), with the remainder located at Columbus (7), Augusta (6), Griffin (4), and a number of other points in Georgia.[28] One shipper is located at Louisville, Ky.

In Mississippi, 54 shippers have facilities at Cleveland (1), Florence (1), Greenville (7), including the port commission and the chamber of commerce thereof, Greenwood (3), Indianola (2), Jackson (32), Laurel (1), Meridian (3), Moss Point (1), Port Gibson (1), and Vicksburg (2).[29] Twenty-five of the supporting shippers have facilities at 15 points in North Carolina. Seven are located at Charlotte, four at Statesville, three at Gastonia, two at both Cornelius and Greensboro, and one at each of the points of Asheville, Forest City, Hickory, High Point, Huntersville, Landis, Old Fort, Raleigh, Sodeyco, and Waynesville. The 25 shippers with facilities in South Carolina are located at 20 points. Three are located at Belton and Greenville (including two motor carriers, one of which, although it is located at Hartsville, S.C., wishes to interline at Greenville), and two are located at Seneca, S.C. One shipper is located at each of the remaining specified South Carolina points.[30] Twelve of the 17 supporting shippers with facilities in

(footnote 26 continued)

Longview, McGregor, McKinney, Marlin, Nocona, Palestine, Perryton, Pineland, Pittsburg, Plano, Port Arthur, Seguin, Sherman, Smith's Bluff, Taylor, Temple, Waco, Winnsboro, and Wolfe City. Some shippers have stores at numerous points in Texas, i.e., 25 (240) under the Texas heading.

[27] Included are shippers located at points in the commercial zone of Birmingham such as Irondale, Ala.

[28] Three shippers have facilities at Rome, two at each of the points of Hampton, LaGrange, Savannah, and Stone Mountain; and one at each of the points of Cedartown, Chickamauga, Claxton, Conyers, Cordele, Dalton, Hartwell, Milledgeville, Sparta, and Tucker, Ga.

[29] Shipper 52 (917) under the Mississippi heading indicates that it has stores located in this State.

[30] Aiken, Anderson, Bethune, Blacksburg, Charleston, Chester, Clearwater, Easley, East Greenwood, Georgetown, Lyman, Mauldin, Orangeburg, Rock Hill, Spartanburg, Startex, and Westminister. Also shipper 1 (13) under the South Carolina heading indicates that it receives traffic at its 29 plants located at numerous points in South Carolina. Another shipper, 18 (574), under South Carolina, indicates that it has facilities in this State.

Tennessee are located at Chattanooga,[9] while 5 have facilities at Memphis and 1 at each of Murfreesboro and Nashville. Two of the five Virginia shippers have facilities at Richmond, Va. The remainder are located at Petersburg, Va.

Middle Atlantic and New England States.—The four supporting Connecticut shippers have facilities at six points: one shipper is located at each of the points of Jewett City, Rockville, Waterbury, West Hartford, and the shipper located at Waterbury also has facilities at Wallingford and Bridgeport. The sole supporting shipper with facilities in Delaware is located at Rockford. Three shippers have facilities at Baltimore, Md. Eight, collectively, have facilities at 12 points in Massachusetts: three are located at Fall River and one at each of the points of Ashland, Charlestown, Dodgeville, Foxboro, New Bedford, North Eastern, Springfield, Waltham, Watertown, Westboro, and Worcester. One shipper has facilities at Nashua, N.H. Nine collectively have facilities at 11 points in New Jersey: two are located at Elizabeth, and one shipper is located at each of the remaining named New Jersey points.[10] The five supporting New York shippers collectively have facilities at six points: one shipper is located at each of the points of Broklyn, New York City, Orangeburg, Pearl River, and Pleasant Valley. The New York City shipper also has facilities in Buchanan, N.Y. Of the eight supporting shippers with facilities in Pennsylvania, two are located at York and one at each of the points of Fort Washington, Marcus Hook, Mount Holly Springs, Philadelphia, Pittsburgh, and Pottsville. Additionally, a motor common carrier wishes to interline at Harrisburg, Pa. One of the four Rhode Island shippers has facilities at Warren and Kenyon; while the remaining three have facilities, respectively, at Lincoln, Pawtucket, Warren, and Woonsocket.

Midwest.—Of the 15 Kansas shippers, 10 have facilities at Kansas City, including 1 motor common carrier, and 2 are located at each of the points of Loring, Topeka, and Wichita.[11] Most of the 27 supporting shippers with facilities in Missouri are located at Kansas City (16), including 2 motor common carriers which wish to interline. Five supporting shippers have facilities at Springfield, Mo., and one shipper is located at each of the remaining named Missouri points.[11]

Bound Brook, East Rutherford, Hillside, Linden, Moorestown, Morris Plains, Orange, Plainfield, Princeton, and Wharton.

Shipper 2 (452) under the Kansas heading indicates that it has stores located in Kansas.

Carl Junction, Marshfield, Noel, St. Louis, Stockton, and Webb City. Shipper 4 (452) under the Missouri heading indicates that it has stores located in a portion of Missouri.

The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive. The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1- to 7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown to have received between 3- and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are respresentative of the service these shippers are and have been receiving.

About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic.[34] Thus, Roadway assertedly has refused to handle shipments, including furniture, and has informed certain shippers that it does not want to handle their traffic. At Springfield and Marshfield, Mo., it has refused to handle shipments weighing less than 5,000 pounds. Ryder has informed a number of shippers located at Chattanooga that it would not provide service between this point and points in Alabama, Georgia, Mississippi, North Carolina, and South Carolina. These shippers were provided a list by Ryder indicating those points which Ryder was no longer serving. Ryder has also informed other shippers that it does not wish to handle their traffic, and it has a 3-line haul restriction on traffic moving to Mississippi. Campbell Sixty-Six refused to handle traffic

[34] Alabama, Arkansas, Georgia, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

to a number of Mississippi points during 1966, and it has refused to handle some of supporting shippers' traffic. Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers.

Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States.[15] A number of shippers at Atlanta have experienced difficulty in obtaining pickup service especially on shipments to points in Louisiana and Mississippi. The shippers collectively complain that approximately 30 of the protestants either failed to make timely pickups and shipments were delayed by 1 or more days, or they failed to make timely deliveries, forcing the receivers either to pick up the incoming shipment at the carrier's dock or wait until the carrier delivered the shipment 1 or more days late. Most of shippers' pickup and delivery complaints are registered against Ryder, Roadway, and Campbell.

Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing. A number of the shippers indicates that normally the interchange of LTL traffic involves, at a minimum, 24 hours. In addition to the difficulties inherent in interline service, shippers complain that tracing is unsatisfactory when multiple lines are involved; that shipments are split in transit and consequently portions of the shipment are lost or delayed; and that they find it difficult to obtain prompt claim service when two or more carriers are involved. Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service. The shippers with

[15] Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

movements to points in the Southwest and Midwest generally receive complaints from customers located in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. Most of the complaints are voiced by customers in Louisiana, Mississippi, and Texas. The shippers in the Southwest receive complaints from customers located in the Southeast, Middle Atlantic, and New England States, with most of the complaints coming from customers in Florida, Georgia, and Mississippi.

The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts.[36] Also, in some cases shippers have suffered losses under contract penalty clauses for failure to live up to commitments because of transportation problems. Many indicate that they or their customers are unable to maintain minimum inventories or meet production schedules. Generally, many shippers submit that because of the inadequacy of existing transportation services, they are not only unable to expand but they find it difficult properly to serve their existing customers. In seeking a solution, some have established distribution warehouses or have reverted to private motor carriage.

While the examiners found that a substantial number of the supporting shippers had not thoroughly investigated existing services, a review of the record indicates that many have made such an investigation and have in fact used the available single-line and a number of feasible joint-line services. While the shippers may not have utilized every possible combination of joint-line service available, they have collectively tried most, if not all, of the available combinations and found them inadequate. Admittedly, some of the shippers failed to specify routings. These failures, however, must be viewed in the light of the assertions of a number of the shippers that even when they routed their traffic they were unable to obtain adequate service, and this function was relegated solely in an attempt to obtain better service.

PROTESTANTS

The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary.[37] For the most part, protestants are regular-route motor common carriers of general commodities which collectively, either

[36] Approximately 80 shippers in a total of 14 Southeast, Southwest, and Midwest States complained about lost business and customers.

[37] None of the protestants opposed only the application of Floyd & Beasley.

directly or through interchange, are authorized to serve the points here sought to be served by applicants.

As described in appendix G, 14 of the remaining 42 protestants introduced transit time studies of traffic handled between the involved points.[38] The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier[39] demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.

Discussion and Conclusions

In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time

[38] The examiners' treatment of the various protestants' transit time (elapsed time) studies is understandably not all-inclusive. It is sufficient for our purposes, however, and we see no need to expand on it inasmuch as any expansion would not affect our discussion of the studies themselves.

[39] This study was introduced by Consolidated

between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

As indicated, the four southwestern applicants (Herrin,[40] Red Ball, Strickland, and Jones) generally seek to extend their authority to southeastern gateways such as Birmingham and Atlanta, and the four remaining southern applicants (Deaton, Baggett, Bowman, and Johnson) propose to expand their operations into the Southwest, with Bowman also seeking to serve Missouri and Kansas points. As a consequence, the applications of these two groups of carriers differ

[40]The validity of characterizing Herrin (of Houston) as a southwestern carrier might be questioned in light of the fact that McLean, of Winston-Salem, N.C., has been substituted as applicant in No. MC-1124 (Sub-No. 206). It is noted, however, that (as will be discussed hereinafter) although Herrin seeks authority to serve southeastern points, with only some exceptions (20 shippers located at Atlanta, 4 at Columbus, 2 at Mobile, and 3 at Memphis) shippers supporting this application are located in the Southwest, or more specifically, 29 are located in Louisiana and 40 in Texas. More important is the fact that even though Herrin holds authority to serve southeastern points, by this application it is seeking to extend its operations (except with respect to Memphis) between points in the Southwest it can presently serve and points in the Southeast which it either cannot serve or to which it can render only limited service. Thus, the status of this carrier as a southwestern applicant, insofar as this proceeding is concerned, has not been altered by the substitution of McLean as applicant.

not only in their specifics (i.e., the points or territories that would be served) but also as to those members of the public to whom their service would primarily be proffered.

In *Mayfield Sons Trucking Co. Extension—Kentucky*, 108 M.C.C. 651, at page 657 (1969), it was stated that:

> the Commission favors the existence of sufficient carrier capacity to encourage competition and provide incentives for real innovation and improvement to the public; however, it will not approve the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers. *M. R. & R. Trucking Co., Ext.—Birmingham*, 105 M.C.C. 69, at page 80.

It has also been pointed out, in *Motor Freight Corp. Ext.—Pottawattamie County, Iowa*, 106 M.C.C. 654, 657 (1968), that: "Multiple-application proceedings require care not only to avoid the proliferation of operating authorities not needed by the shipping public, but also *** [to select those] carriers with the ability to perform the proposed service." We must decide which of the applicants here before us should receive authority inasmuch as (a) there are motor common carriers already operating generally between the territories applicants propose to serve, (b) the present applications may broadly be characterized as those of either southwestern carriers proposing to expand their operations to points in the Southeast or southern carriers seeking, for the most part, to extend their operations to points in the Southwest, (c) there is not, in our opinion, sufficient traffic to sustain all of the additional motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest. Cf. *Pan-American Bus Lines Operation*, 1 M.C.C. 190, at page 203 (1936).

Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation

services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, and others that will be discussed in connection with our grants of authority to each individual carrier, we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson.

The southwestern applicants.—Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar. With respect to this latter category of applicants, it is our opinion that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Regrigerated Xpress, Inc., Ext.—Denison, Iowa,* 96 M.C.C. 233, 237 (1964), are as follow: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. Cf. also *H. C. Gabler, Inc., Ext.—Cement from Md. and Pa. Counties,* 86 M.C.C. 447, 469-470 (1961), and cases cited therein. Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones; that the number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest; that with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones; that Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a)

Pages 133-148 intentionally left blank

Herrin proposes 6 additional southeastern terminals, the reestablishment of a terminal at Little Rock, and would add 41 tractors, 80 trailers, and 67 trucks to its fleet, (b) Strickland proposes to establish 4 additional southeastern terminals, and (c) Jones proposes to establish terminals at 2 southeastern points (Atlanta and Birmingham) and at 2 southwestern points (El Dorado and Texarkana); that Red Ball presented 130 supporting witnesses and an additional 23 witnesses specifically supported its application, whereas (a) Herrin presented 87 witnesses and an additional 11 supported its application, (b) Strickland presented 102 shipper witnesses, and an additional 24 supported its application, and (c) Jones presented 90 witnesses and an additional 11 supported its application; and that Red Ball filed its application on May 16, 1965, Herrin on June 18, 1965, Strickland on June 16, 1965, and Jones on June 14, 1965. Clearly, of the southwestern applicants, Red Ball has made the superior showing with respect to each of the above-described criteria, and, therefore, it is selected to receive the authority for which a public need has been found in this report. Moreover, none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the extensive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other, the territory Red Ball now serves. Cf. *Herrin Transp. Co. Extension—Georgia*, 95 M.C.C. 700, 715 (1964).

Against these factors, Herrin submits that it is the logical choice because (a) it now has a service and alternate route into Atlanta, (b) it does not seek to expand its operations into any new point inasmuch as it now conducts operations through or to, in the case of Atlanta and Pensacola, all the points which it here seeks to serve, and (c) Red Ball is not now a competitive factor in Georgia nor does it conduct operations even for operating convenience only into Birmingham and Atlanta. Herrin further points out that Atlanta and Birmingham are large distribution centers and that the gulf coast region in its territory west of the Mississippi River is a logical distribution area. This latter statement signifies the import of its application. Albeit this applicant asks to have certain restrictions on its existing authority removed with respect to Pensacola and Atlanta, and seeks to serve (excluding consideration of Atlanta and Birmingham) Mobile, Montgomery, Columbus, and Jackson, it produced evidence (excluding shippers and receivers located in the Southwest) of only four shippers located at Columbus, two at Mobile (Red Ball now serves between Mobile and Jackson and points in the Southwest), and three at Memphis. Its

application, like those of the other southwestern applicants, was filed primarily for authority to serve southwestern shippers and receivers on traffic moving between the Southwest, on the one hand, and, on the other, Birmingham and Atlanta. Clearly, Red Ball is in a better position than Herrin to render this service. To the extent that Herrin's proposal differs from Red Ball's, the former has not shown that the present or future public convenience and necessity require that these portions of its application be granted.

The examiners found that from a commodity standpoint, the only need shown for additional service relates to LTL shipments of commodities requiring refrigeration and not generally to the transportation of commodities requiring protective service. It appears that 4 of the 19 shippers whose evidence has been summarized by Jones require protection from freezing not heat, 3 require truckload and not LTL service, and 6 ship candy and would require refrigerated service only on a seasonal basis.

Although there may thus be some limited need for LTL refrigerated service, such service was proposed by Jones only in conjunction with its basic proposal to render regular-route general-commodity service. It has not been shown that the present or future public convenience and necessity require Jones' proposed regular-route services. By the same token, Jones has not shown a need for the regular-route transportation of specified commodities,[4] and any grant of authority made herein would have to be irregular-route in nature. The examiners found, however, that any need was for LTL refrigerated service which could not rationally be authorized because, as pointed out in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1, at page 48 (1967), "[r]estrictions limiting service to the handling of less-than-truckload shipments are indefinite and impractical, ***would be difficult to enforce, and ***will not be imposed by this Commission." We conclude that Jones' application also should be denied in its entirety.

The southern applicants.—Of the four remaining southern applicants, we are of the opinion that Bowman has pursuasively demonstrated a need for its services between specified points in Mississippi, Kansas, Missouri, Arkansas, Louisiana, and Texas, on the one hand, and, on the other, those points in the Southeast and East that it presently serves. This showing is particularly strong with respect to the first three States named.

Approximately 135 witnesses in 13 States support that portion of Bowman's application seeking authority to serve the 10 specified

[4] As pointed out in *Motor Common Carriers of Property—Routes and Service*, 88 M.C.C. 415, 430 (1961), regular-route authority has sometimes been granted to motor common carriers of only a few commodities, but in recent years such a practice has been uniformly avoided.

Mississippi points. Over 100 of these have experienced difficulties with inadequate, inconsistent, and excessive transit times. The witnesses' transit time studies show that between 3- and 4-day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points, with transit times ranging between 1 and 7 days. From other points in the territory Bowman presently serves, transit times to Mississippi range from 3 to 21 days. Approximately 25 supporting witnesses have complained of either refusals by authorized carriers to handle their traffic, and of carrier embargoes or restrictions; and about 50 have experienced pickup and delivery problems. A number of the witnesses further complain of loss, damage, difficulties with interline service, lost business and accounts, and customer complaints. Collectively, Deaton, Dixie, Campbell, Roadway, and Ryder are cited for refusing to handle a number of the supporting shippers' traffic to Mississippi from points in the Southeast. At least one of the shippers indicated that it would be forced to open a warehouse in Mississippi unless the transit time can be improved. Another shipper represented that it would be forced to switch its shipping point on traffic to Mississippi from the Southeast to the Southwest. Other witnesses located at such points in Mississippi as Jackson and Greenville have discontinued shipping from Atlanta because of the problems they have experienced.

As pointed out by Bowman, two protestants to its application (Campbell and Herrin) withdrew their opposition, and of the remaining protestants to the Mississippi portion of its application, Dixie serves only 4 of the 10 Mississippi points here sought to be served by Bowman, and maintains terminals at only 2 of these points.[42] Gordons does not actively solicit any traffic between Atlanta and Birmingham, on the one hand, and, on the other, any point in Mississippi south of U. S. Highway 82, which would include, as here pertinent, Meridian, Jackson, Vicksburg, Laurel, Hattiesburg, Moss Point, and Pascagoula (or 7 of the 10 points Bowman seeks to serve). Shippers complain that Ryder is not rendering adequate service to Mississippi, and that it has refused to handle certain traffic to points in this State. Deaton holds authority to render single-line service to some of the involved Mississippi points, but it assertedly interlines this traffic. Since the hearings in the instant proceedings, Roadway, Braswell, and GFA have been authorized to serve points in Mississippi. While the single-

[42] The fall 1971 edition of the American Motor Carrier Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points, Jackson.

line service which Roadway now holds authority to provide will be duplicated to or from a number of the involved Mississippi points, the coverage of its operating rights in southern Alabama and Georgia is limited and it does not hold authority to render regular-route service at points in Florida. Braswell's single-line operations to or from Vicksburg, Jackson, and Meridian extend only as far east as Atlanta, and its authority in Alabama is limited to only the major points of Birmingham and Montgomery. GFA now holds authority to serve Jackson, Hattiesburg, Laurel, and Meridian, but its single-line operations in the Southeast embrace only a limited territory.

Approximately 80 witnesses support the Kansas-Missouri portion of Bowman's application. Over 60 of these complain about inconsistent and excessive transit times, and a number complain about pickup and delivery problems, loss, damage, shortage, tracing difficulties, misrouting, interline problems, unsuitable or inadequate equipment, customer complaints, and lost business and penalties. Generally, these witnesses have shown that the transit times on a substantial volume of their traffic between the Kansas-Missouri points Bowman seeks to serve and points in the Southeast is at least 1 day more than is proposed by Bowman. Roadway and Transcon have declined to handle some of the supporting witnesses' traffic. Shippers with traffic moving between points in Florida and points in the involved Kansas-Missouri territory represent that they must rely on joint-line service; and while those which utilize Bowman's service indicate that it is satisfactory, they are not satisfied with the service of the carriers with which Bowman interlines. Bowman submits that only three general-commodity motor carriers (Gordons, Watson-Wilson, and T.I.M.E.[4]) oppose this portion of its application, and while holding authority to serve a broad territory in the South, they collectively serve only Birmingham and Mobile, Ala.; Nashville, Chattanooga, and Knoxville, Tenn.; Atlanta, Augusta, Athens, and Rome, Ga.; and Charleston and Greenville, S.C. Assertedly, even if these carriers were to serve each of their authorized points, there would still be no service from the entire State of Florida; no service from those points in Georgia south of U.S. Highway 80; no service from those points in South Carolina north of Greenville, Columbia,

[4]It is noted that in *T.I.M.E.-DC, Inc.—Investigation & Revocation of Certs.*, 113 M.C.C. 897 (1971), it was found that respondent T.I.M.E. has been in violation of section 216(b) of the Interstate Commerce Act and has failed to comply with the terms and conditions of its certificates in that it has not been rendering reasonably continuous and adequate service in the transportation of general commodities at numerous points in, among other States, Missouri and Tennessee. That proceeding is pending on petition

and Charleston; and no service from the entire States of North Carolina and Virginia.

The extent of Roadway's opposition to Bowman's application has been raised in pleadings. In exhibit 1865, at pages 2 and 3, Roadway indicates that it opposes the Bowman application insofar as authority is sought (1) between Birmingham, on the one hand, and, on the other, Houston and Fort Worth, (2) between Houston and Dallas, and (3) between Memphis and West Memphis, on the one hand, and, on the other, Oklahoma City. This is qualified by the statement on page 5 of the exibit that appendix 2 thereto, which is Roadway's systems map, shows the Roadway points that are in direct conflict with points of the applicants. The map includes Kansas City, Carthage, Topeka, and Springfield. The examiners did not include Roadway in their list of carriers offering single-line service between Atlanta and/or Birmingham, on the one hand, and, on the other, Kansas City; and Roadway has not specifically taken exception to this omission. While Roadway technically opposes the Kansas-Missouri portion of Bowman's application, it is noted that its evidence is directed primarily to traffic moving between Texas points, on the one hand, and, on the other, Roadway terminal points in Georgia, North and South Carolina, Tennessee, Alabama, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. In any event, Roadway's authority in southern Georgia and Alabama is limited and it does not render service to points in Florida. Although Consolidated acquired authority to serve Atlanta since the hearing and can thus render single-line service between this point, on the one hand, and, on the other, Kansas City and Springfield, its operations in the Southeast are limited.

Additionally, Bowman has shown that the present and future public convenience and necessity require the extension of its operations to points in the remaining States it proposes to serve. The evidence of the supporting witnesses establishes a clear and convincing public need for single-line motor carrier service between the broad southeastern and easten seaboard territory served by Bowman, on the one hand, and, on the other, the Arkansas points it proposes to serve. Approximately 100 witnesses supported this portion of Bowman's proposal. Many expressed a need for single-line service between the Arkansas points, on the one hand, and, on the other, points in Florida, Georgia, and the Carolinas (other than Birmingham, Atlanta, and Charlotte) for which no such service is available. Existing carriers which hold authority to operate between the Arkansas

points and points which Bowman presently serves are limited territorily either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants proposes such an extensive service.

Similarly, the protestants are unable to provide the full scope of the single-line services proposed by this applicant between the Louisiana points (excluding New Orleans from consideration at this time) it proposes to serve and the territory it currently serves. Over 150 witnesses support this portion of Bowman's proposal, and they too have demonstrated material inadequacies in the transportation services they now receive. With respect to New Orleans, the approximately 30 shippers supporting this aspect of Bowman's application have shown that the service they are receiving between specified points in Alabama and Tennessee, on the one hand, and, on the other, New Orleans is not adequate. None of the protestants provides single-line service between all of the points Bowman serves in its authorized territory here under consideration and New Orleans. Regarding Texas, it is noted that more witnesses from the Dallas-Fort Worth area testified in support of Bowman's application than any of the other applicants. Also, witnesses from numerous points throughout Bowman's authorized territory testified in support of this portion of its application. Many of these shippers do not presently have single-line service to this important area, and none of the other applicants proposes to render the extensive single-line services to be proffered by Bowman. Of the carriers which operate between the southern Texas points which Bowman proposes to serve and its authorized territory, only Roadway and Ryder can provide a service even remotely comparable to that proposed. Shippers' testimony, however, demonstrates that the latter is not rendering adequate service, whereas the former's authority in the Southeast is, as noted above, limited in certain respects.

We recognize that, as was pointed out in *Hancock-Trucking, Inc., Ext.—Gulf and West Coast Routes*, 62 M.C.C. 513, 535 (1954), "the national transportation policy does not tolerate the thought that all shippers and all points are entitled to single-line motor carrier service." Many shippers have nevertheless demonstrated, on the present record, that they require the single-line service here authorized to be provided by Bowman, and that the lack of such service has been harmful to them. See *Roadway Exp., Inc.*,

Ext.—Birmingham, Dallas, Houston, 82 M.C.C. 689 (1960). Thus, we believe that Bowman has also shown a need for an extension of its authority into Arkansas, Louisiana, and Texas in the manner hereinafter set forth in our findings.

Johnson proposes an "overhead" single-line service between a number of major points in Texas, Louisiana, and Mississippi, on the one hand, and, on the other, points it serves along the eastern seaboard and in the gulf territory. Its application is supported by 236 witnesses located throughout the areas it serves or proposes to serve. Their testimony establishes that the existing service on small shipments traffic between the involved territories is generally inadequate. Many of the supporting witnesses validly complain with respect to lengthy and undependable transit times; and their studies, considered on the whole, demonstrate that inconsistent and excessive transit times have been experienced on a substantial portion of the involved traffic. Complaints also were voiced by many of the shippers with respect to poor pickup and delivery service, tracing problems, and excessive loss and damage. Many of the shippers' problems can be attributed to the existing joint-line motor service. As pointed out by Johnson, of the major eastern seaboard carriers which compete with it and render a portion of the involved joint-line services, only Akers opposes Johnson's application. Major east coast motor common carriers such as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, and R. C. Motor failed to participate in this proceeding; and it is therefore apparent that important segment of the involved joint-line motor carrier system does not oppose the Johnson application.

Of the single-line protestants which serve between the points Johnson proposes to serve and its present territory, Ryder does not hold authority to serve the Dallas-Fort Worth area and much of the Carolinas; Roadway holds authority to perform the proposed "overhead" service but its service was the subject of many of the shippers' complaints; and the authorities of T.I.M.E. and Transcon are limited to such an extent that they can provide only a portion of the service proposed by Johnson. It is true that McLean now holds authority to provide single-line service comparable to that proposed by Johnson, but that carrier did not protest Johnson's application and there is no evidence on this record that it is ready and willing to furnish the needed service. In our opinion, Johnson has demonstrated that there is a need for its proposed service, except to the extent set forth below. The stated purpose of Johnson's seeking

points and points which Bowman presently serves are limited territorily either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants proposes such an extensive service.

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authority to operate over the alternate route between Shreveport and Baton Rouge, La., is solely to enable Johnson to move its empty equipment from the northern route to the southern route for use at southeastern points. Inasmuch as specific authority is not required to perform this type of operation, however, and because Johnson has not otherwise shown any reason for a grant of such authority, this portion of its application will be denied.

Deaton and Baggett admittedly filed defensive applications herein in an effort to have all of the applications denied. They concede that their applications represent an attempt to keep pace with any further realignment of existing motor carrier operational patterns; and each, in its "conditional" exceptions, contends that the granting of its application would be a necessary corollary to a grant of any of the other applications. On brief, Deaton asserted that all of the applications should be denied inasmuch as applicants had failed to show a need by the shipping public for their services, and because any expressed need could be met by existing carriers, including those authorized to perform service in the involved territory after the record herein was closed. Deaton does not take exception to the examiners' denial of its application, along with the other applications. Thus, it concedes that it has not shown a need for its proposed service. A grant of authority to this carrier cannot be justified solely on the basis that, without it, Deaton will not be able to survive and remain a viable competitve carrier in the area if any of the other applications are granted. Nor do we believe that Deaton has shown on this record that the above-described grants to Red Ball, Bowman, and Johnson will materially adversely affect its operations. Deaton's application will therefore be denied. Baggett submits that although it is still a "defensive" applicant, it became a "serious" applicant after failing to cause all applicants to withdraw; and it believes that the record has disclosed a public need for its proposed service. Baggett's application will also be denied. While it, unlike Deaton, is now unwilling to concede that it has failed to show a need for its proposed service, we think it plain that this is indeed the case. Baggett, by its "conditional" exceptions and weak shipper support (approximately 50 shippers support its application) has demonstrated tht it is not interested in the public convenience and necessity but rather only in maintaining the competitive *status quo*.

Undoubtedly, granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier services. It also is true that the above-described grants of authority will subject some of protestants' traffic

to the possibility of diversion. With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[4] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. *Liberty Trucking Co. Ext.—Lake Mills, Wis.*, 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience.

Other matters.—A few other matters require comment. First, some of the protestants challenge the feasibility of the proposals of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in *West Brothers Inc., Extension—Baton Rouge, La.*, 106 M.C.C. 792, 799 (1968), modified on other grounds at 108 M.C.C. 485 (1969):

> Evidence that applicant's transit time for existing services over a shorter distance is more than *** [the proposed transit time] is not conclusive proof that it will not render *** [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.

Additionally, Johnson has revised its operations and effective March 13, 1966, it commenced using two-man teams which would be utilized on a direct nonstop basis between Charlotte and the seven proposed terminal points here under consideration.

Second, inasmuch as the authority sought by Red Ball partially duplicates authority presently held by this applicant, the grant of authority made herein, to the extent of such duplication, shall be construed as conferring not more than a single right. Third, although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the

[4] In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Cambell, thereby rendering the issue as to the vulnerability of the former's operations moot.

use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language. Inasmuch as Moss Point, Miss., lies within the commercial zone of Pascagoula, Miss., no specific authority is required to enable Bowman to serve the former point in light of the findings below. See *Commercial Zones and Terminal Areas*, 54 M.C.C. 21, 108 (1952); 49 CFR 1048.101 and 1049.1. Finally, with respect to Bowman, its grant of authority will be modified to conform to current Commission practice. Fourth, authority in terms of miles about a particular point will not be granted herein since it is administratively undesirable. See *Glennon Transports, Inc., Extension—New York, N. Y.*, 78 M.C.C. 157 (1958).

And last, Johnson indicates that it proposes to offer daily, scheduled, LTL service between Dallas and Savannah by tacking regular- and irregular-route authority. Clearly, the separate nature of the authorities would not be preserved if in fact Johnson provided such a service. As this represents only a minor aspect of Johnson's proposal, we think that its application should be granted with the understanding that the regular-route rights will not be used in combination with Johnson's existing irregular-route authority for the performance of an unauthorized regular-route service between Dallas and Savannah. We believe that otherwise the separate nature of Johnson's irregular-route rights can be maintained, but we do not wish to infer that any conversion of these operations into regular-route operations in connection with through service to and from points on the regular routes authorized herein will be condoned.

FINDINGS

In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), we find that applicants have failed to establish that the present or future public convenience and necessity require the proposed operations; and that these applications should be denied.

In No. MC-2229 (Sub-No. 132), we find that the present and future public convenience and necessity require operation by

applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) over the routes, between the points, and in the manner set forth in part I of appendix H to this report, (1) restricted against the transportation of traffic moving between Memphis, Tenn., and points in its commercial zone, on the one hand, and, on the other, Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and points in their respective commercial zones, (2) subject to the condition that the authority granted herein, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring 5 years after the effective date of the certificate to be issued herein, and (3) subject to the condition that to the extent such authority duplicates the authority presently held by applicant, it shall not be construed as conferring more than a single operating right.

In No. MC-94201 (Sub-No. 56), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) over the routes, between the points, and in the manner set forth in part II of appendix H to this report (1) restricted to the transportation of traffic moving from, to, or through Birmingham, Montgomery, and Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.; (2) with service at New Orleans restricted to traffic originating at or destined to points in Tennessee and those points in Alabama on and north of U.S. Highway 78; and (3) restricted against the transportation of (a) traffic originating at or received from connecting carriers at Memphis, Tenn., and points in its commercial zone and destined to points west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Louchiching Counties, Minn., to the international boundary line between the United States and Canada; or (b) traffic originating at points west of the line described in (3)(a) above and destined to or delivered to connecting carriers at Memphis, Tenn., and points in its commercial zone; and subject to prior publication in the Federal Register of notice of the authority granted herein.

In No. MC-106401 (Sub-No. 18), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over the routes, between the points, and in the manner set forth in part III of appendix H to this report, subject to a restriction in part (1) of the grant to traffic moving from, to, or through Atlanta, Ga.; and subject to a restriction in part (2) of the grant to traffic moving from, to, or through Gulfport, Miss.

We further find that the applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18) are fit, willing, and able properly to perform such services and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that an appropriate certificate authorizing the above-described operations should be granted to each of the three above-described applicants; and that the applications in all other respects should be denied.

Upon compliance by each of the three applicants with the requirements of sections 215, 217, and 221(c) of the act and with our rules and regulations thereunder, an appropriate certificate will be issued that applicant.

An appropriate order will be entered.

APPENDIX A

Authority sought

No. MC-1124 (Sub-No. 206), filed June 18, 1965, as amended.

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA [1]

(REENTITLED)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA

General commodities including classes A and B explosives (but excepting commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Serving the points of Birmingham, Mobile, and Montgomery, Ala.; Columbus, Ga.; Jackson, Miss., and Pensacola, Fla., as intermediate points on applicant's presently authorized regular routes.

(2) Serving as points of joinder only, the points of Atmore, intersection of U.S. Highways 29 and 80 near Tuskegee, Flomaton, Woodstock and Selma, Ala., and Poplarville, Miss.

(3) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to Macon, Ga., thence over Georgia Highway 87 to Jackson, Ga., thence over U. S. Highway 23 to Atlanta, and return over the same route, serving the intermediate points of Montgomery, Ala., and Columbus, Ga.; and serving Selma, Ala., and the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as points of joinder only.

(4) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, and return over the same route, serving the intermediate point of Birmingham, Ala.

(5) Between New Orleans, La., and Birmingham, Ala.:

From New Orleans over U. S. Highway 11 to Birmingham, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., and Poplarville, Miss., as points of joinder.

(6) Between Pensacola, Fla., and Flomaton, Ala.:

From Pensacola over U. S. Highway 29 to Flomaton, and return over the same route, serving no intermediate points, and serving Flomaton, Ala., as a point of joinder only.

(7) Between Woodstock, Ala., and Mobile, Ala.:

From Woodstock over Alabama Highway 5 to junction U. S. Highway 43 near Thomasville, Ala., thence over U. S. Highway 43 to Mobile, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., as a point of joinder.

(8) Between Montgomery, Ala., and Atlanta, Ga.:

From Montgomery over U. S. Highway 80 to Tuskegee, Ala., thence over U. S. Highway 29 to Atlanta (also from Montgomery over Interstate Highway 85 to Atlanta)

[1] Herrin Transportation Company was merged into McLean Trucking Company, effective October 1, 1969, as authorized in No. MC-F-10121, *McLean Trucking Company—Control and Merger—Herrin Transportation Company* (not printed), decided August 5, 1969.

and return over the same route, serving no intermediate points, and serving the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as a point of joinder only.

(9) Between Atlanta, Ga., and Columbus, Ga.:

From Atlanta over Georgia Highway 85 to Woodbury, Ga., thence over Georgia Highway 85E to Manchester, Ga., thence over Georgia Highway 85 and alternate U. S. Highway 27 to Columbus and return over the same route, serving no intermediate points.

(10) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U. S. Highway 31 (also over Interstate Highway 65) to Mobile and return over the same route, serving the intermediate point of Montgomery, Ala., and serving the point of Flomaton, Ala., as a point of joinder only.

(11) Between Selma, Ala., and Montgomery, Ala.:

From Selma over Alabama Highway 14 to Prattville, Ala., thence over U. S. Highway 82 to Montgomery and return over the same route, serving no intermediate points, and serving Selma as a point of joinder only.

(12) Between Mobile, Ala., and Baton Rouge, La.:

From Mobile over U. S. Highway 98 to Lucedale, Miss., thence over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 21 to Covington, La., thence over U. S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, and serving Poplarville, Miss., as a point of joinder only.

(13) Between Birmingham, Ala., and Columbus, Ga.:

From Birmingham, Ala., over U. S. Highway 280 to Columbus and return over the same route, serving no intermediate points.

RESTRICTION: Service proposed at the points and over the routes specified in paragraphs 1 through 13 above is restricted to traffic moving to, from or through Memphis, Tenn., or Monroe, New Orleans or Baton Rouge, La.

No. MC-2229 (Sub-No. 132), filed May 17, 1965, as amended.

RED BALL MOTOR FREIGHT INC., EXTENSION, ATLANTA, GA.

General commodities including classes A and B explosives (but excepting household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 29, thence over U. S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala., for purposes of joinder only:

From Meridian over U. S. Highway 11 to Tuscallosa, and return over the same route, serving no intermediate points.

RESTRICTION: Restricted against the transportation of property moving between Memphis, Tenn., and its commercial zone, on the one hand, and, on the other,

Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and their respective commercial zones.

No. MC-11207 (Sub-No. 233), filed May 28, 1965, as amended.

DEATON TRUCK LINE, INC., RE ENTITLED DEATON, INC., EXTENSION
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), over irregular routes:

(1) Between Atlanta, Ga., on the one hand, and, on the other, Monroe and Shreveport, La., Dallas and Fort Worth, Tex., and points within 10 miles of Dallas and Fort Worth.

(2) Between New Orleans, La., on the one hand, and, on the other, Baton Rouge, La., Orange, Beaumont, Texas City, and Houston, Tex., and points within 10 miles of Houston.

RESTRICTION: Restricted against local service between New Orleans and the points specified.

No. MC-18088 (Sub-No. 36), filed May 18, 1965, as amended.

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION -
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

(2) Between Atlanta, Ga., and Houston, Tex.:

From Atlanta over U. S. Highway 29 to Opelika, Ala., thence over Interstate Highway 85 to Montgomery, Ala. (also from Opelika over U. S. Highway 29 to junction U. S. Highway 80, thence over U. S. Highway 80 to Montgomery), thence over U. S. Highway 31 to Mobile, Ala., thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 to junction U. S. Highway 165 at Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge and Lake Charles, La., Orange, Beaumont and Texas City, Tex., and those within 10 miles of Houston.

(3) Between Montgomery, Ala., and junction U. S. Highways 11 and 80 near Cuba, Ala., over U. S. Highway 80, for purpose of joinder only, serving no intermediate points.

(4) Between junction of U. S. Highways 71 and 190 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, for purpose of joinder only, serving no intermediate points.

(5) Between junction U. S. Highway 78 and Alabama Highway 21 near Anniston, Ala., and the junction of U. S. Highways 231 and 80 near Montgomery, Ala., for purpose of joinder with applicant's irregular-route operations:

From junction U. S. Highway 78 and Alabama Highway 21 over Alabama Highway 21 to junction U. S. Highway 231, thence over U. S. Highway 231 to junction U. S. Highway 80, and return over the same route, serving the intermediate point of Sycamore.

RESTRICTION: Restricted to traffic moving between points east of the Mississippi River except Baton Rouge, La., on the one hand, and, on the other, points west of the Mississippi River and Baton Rouge.

No. MC-59680 (Sub-No. 147), filed June 16, 1965.

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, GA.

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U.S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Atlanta, Ga., and Shreveport, La.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Shreveport, and return over the same route.

Intermediate point: Jackson, Miss.

Joinder point: Monroe, La.

No. MC-76177 (Sub-No. 304), filed July 30, 1965.

BAGGETT TRANSPORTATION COMPANY EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, blasting supplies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 29 to junction U. S. Highway 80 (near Tuskegee, Ala.), thence over U. S. Highway 80 to Montgomery, Ala. (also from Atlanta over Interstate Highway 85 to Montgomery), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Montgomery and Selma, Ala., Dallas, Tex., those within 15 miles of Dallas, and Those within 15 miles of Fort Worth.

(2) Between Birmingham, Ala., and Fort Worth, Tex.:

From Birmingham over U. S. Highway 11 to junction U. S. Highway 80 (near Cuba, Ala.), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate point: Tuscaloosa, Ala.

(3) Between Montgomery, Ala., and Houston, Tex.:

From Montgomery over U. S. Highway 31 to Mobile, Ala. (also from Montgomery over Interstate Highway 65 to Mobile), thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 via Baton Rouge to Kinder, La., thence over U. S. Highway 165 to the junction of U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Mobile, Ala., Beaumont, Port Arthur, Smith's Bluff, Texas City, and those within 15 miles of Houston.

(4) Between the junction of U. S. Highways 190 and 71 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, serving no intermediate points, for purpose of joinder only.

(5) Between Meridian, Miss., and the junction of U. S. Highways 11 and 190 near Slidell, La., over U. S. Highway 11, serving no intermediate points, for purpose of joinder only.

No. MC-94201 (Sub-No. 56), filed July 12, 1965, as amended.

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading):

(1) Between Birmingham, Ala., and Houston, Tex.:

(a) From Birmingham over U.S. Highway 31 (also over Interstate Highway 65) to Atmore, Ala., thence over Alabama Highway 21 to the Alabama-Florida State line, thence over Florida Highway 97 to junction U.S. Highway 29, thence over U.S. Highway 29 to Pensacola, Fla., thence over U.S. Highway 90 to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstate Highway 10) to Houston and return over the same route, serving the intermediate points of Pensacola, Fla., Mobile, Ala., Grand Isle, Lockport and Golden Meadow, La., Pascagoula and Moss Point, Miss., New Orleans, Baton Rouge and Lake Charles, La., and Orange and Beaumont, Tex., and the off-route points of Port Arthur, Baytown and Texas City, Tex., and those off-route points within a 15 mile radius of Birmingham and Mobile, Ala., Pensacola, Fla., New Orleans, Baton Rouge and Lake Charles, La., and Port Arthur, Beaumont and Houston, Tex.:

(b) From Birmingham over U.S. Highway 11 (also over Interstate Highway 59) to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Meridian, Laurel and Hattiesburg, Miss., and those off-route points within a 15 mile

radius of Birmingham, Ala., New Orleans, Baton Rouge and Lake Charles, La., Port Arthur, Beaumont, and Houston, Tex., and Hattiesburg and Meridian, Miss.

(2) Between Brewton, Ala., and Pensacola, Fla.:

Over U.S. Highway 29, serving no intermediate points, as an alternate route for operating convenience only.

(3) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U.S. Highway 31 to Bucksville, Ala., thence over Alabama Highway 5 to Thomasville, Ala., thence over U.S. Highway 43 to Mobile and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(4) Between Poplarville, Miss., and Baton Rouge, La.:

From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La., thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(5) Between Montgomery, Ala., and junction U.S. Highways 11, 80, and Interstate Highway 59:

Over U.S. Highway 80, serving all intermediate points.

(6) Between Birmingham, Ala., and Fort Worth, Tex.:

(a) From Birmingham over U.S. Highway 11 (also over Interstate Highway 20) to Meridian, Miss., thence over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth and return over the same route, serving the intermediate points of Meridian, Jackson, and Vicksburg, Miss., Monroe, Ruston and Shreveport, La., and Marshall, Gladewater, Longview and Dallas, Tex., and those off-route points within a 15 mile radius of Birmingham, Ala., Fort Worth, Tex., and Meridian, Jackson and Vicksburg, Miss.;

(b) From Birmingham over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, Tex.-Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth and return over the same route, serving the intermediate points of Columbus, Greenwood and Greenville, Miss., El Dorado and Crossett, Ark., Texarkana, Tex.-Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark., and those off-route points within a 15 mile radius of Birmingham, Ala., Dallas and Fort Worth, Tex., Texarkana, Tex.-Ark., Columbus, Greenwood and Greenville, Miss.

(7) Between Birmingham, Ala., and Topeka, Kans.:

From Birmingham over U.S. Highway 78 to Memphis, Tenn., thence over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo., thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka and return over the same route, serving the intermediate points of Memphis, Tenn., Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo., and Kansas City, Mo.-Kans.; and those off-route points within a 15 mile radius of Birmingham, Ala., and Kansas City, Mo.-Kans., and Springfield, Mo.

(8) Between Memphis, Tenn., and Little Rock, Ark.:

From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving off-route points within a 15 mile radius of Little Rock, Ark.

(9) Between West Memphis, Ark., and Little Rock, Ark.:

From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., serving off-route points within a 15 mile radius of Little Rock, Ark.

(10) Between Little Rock, Ark., and Greenville, Miss.:

From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.:

Over U.S. Highway 75 (also over Interstate Highway 45), serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.:

Over Interstate Highway 30 (also over U.S. Highway 67), serving no intermediate points, as an alternate route for operating convenience only.

RESTRICTIONS:

(a) Restricted to service on traffic moving from, to, or through Birmingham, Ala., Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.

(b) Service at New Orleans, La., restricted to traffic originating at or destined to points in Tennessee and points in Alabama on and north of U.S. Highway 78.

(c) Restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not as to traffic moving through Memphis, Tenn., and its commercial zone) on the one hand, and points west of the Mississippi River, on the other hand.

No. MC-10640) (Sub-No. 18), filed March 23, 1965.

JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Jackson, Miss., Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

RESTRICTION: Restricted to traffic moving from, to, or through Atlanta, Ga.

(2) Between New Orleans, La., and Houston, Tex.:

From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge, La., Orange, Beaumont, and Texas City, Tex., and those within 10 miles of Houston.

RESTRICTION: Restricted to traffic moving from, to, or through Gulfport, Miss., (no local service between New Orleans and points on the above route).

(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., over U.S. Highway 80 for operating convenience only.

(4) Between Shreveport, La., and the junction of U.S. Highways 71 and 190 near Baton Rouge, La., over U.S. Highway 71 for operating convenience only.

No. MC-111231 (Sub-No. 67), filed June 14, 1965, as amended.

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA

General commodities including classes A and B explosives (but excepting commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U.S. Highway 82 in Arkansas.

(2) Between Texarkana, Ark., and Sherman, Tex.:

From Texarkana over U.S. Highway 82 to Sherman, and return over the same route.

All intermediate points.

(3) Between Birmingham, Ala., and Memphis, Tenn.:

From Birmingham over U.S. Highway 78 to Memphis, and return over the same route.

No intermediate points.

(4) Between Texarkana, Ark., and Dallas, Tex.:

From Texarkana over U.S. Highway 67 to Dallas, and return over the same route.

All intermediate points.

RESTRICTION: Service is restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not on traffic moving through Memphis and its commercial zone), on the one hand, and, on the other, points east of the Mississippi River.

APPENDIX B

Protestants'

1. Holloway Motor Express, Inc.
2. Consolidated Freightways Corp. of Delaware
3. Illinois-California Express, Inc.
4. Southwestern Transportation Company
5. Alamo Express, Inc.
6. Central Freight Lines, Inc.
7. Red Arrow Freight Lines, Inc.
8. Eagle Motor Lines, Inc.
9. T.I.M.E. Freight, Inc.
10. Arkansas-Best Freight System, Inc.
11. Watson-Wilson Transportation System, Inc.
12. Trans-Cold Express, Inc.

'By orders of the Commission, the names of protestants numbered 9, 11, 25, 34, and 39 have been changed.

13. Missouri Pacific Railroad Company
    The Texas & Pacific Railway Company
    Missouri Pacific Truck Lines, Inc.
    The Texas & Pacific Motor Transport Co.
14. Red Line Transfer & Storage Company, Inc.
15. A &H Truck Line, Inc.
16. Viking Freight Company
17. Gordons Transports, Inc.
18. Mercury Motors, Incorporated
19. Mercury Motor Express, Inc.
20. Carolina Freight Carriers Corporation
21. Akers Motor Lines, Inc.
22. M. R. & R. Trucking Company
23. Mercury Freight Lines, Inc.
24. Howard Hall Company, Inc.
25. West Brothers, Inc.
26. Deaton, Inc.
27. Floyd & Beasley Transfer Company, Inc.
28. Baggett Transportation Company
29. Georgia-Florida-Alabama Transportation Co., Inc.
30. Pilot Freight Carriers, Inc.
31. The Mason and Dixon Lines, Incorporated
32. Georgia Highway Express, Inc.
33. Campbell Sixty-Six Express, Inc.
34. Jack Cole Company, Dixie Highway Express, Inc.
35. Brown Transport Corp
36. East Texas Motor Freight Lines, Inc.
37. Transcon Lines
38. Roadway Express, Inc.
39. Herrin Transportation Company
40. ET&WNC Transportation Company
41. United Motor Freight Terminal, Inc.
42. Red Ball Motor Freight, Inc.
43. Ryder Truck Lines, Inc.
44. Braswell Motor Freight Lines, Inc.

APPENDIX C

Protestants' replies

Replies were filed separately by Pilot Freight Carriers, Inc., to the exceptions of applicant in No. MC-94201 (Sub-No. 56); separately by Ryder Truck Lines, Inc., to the exceptions of applicant; jointly by Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., to the exceptions of applicants and interveners; jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc. (by order of the Commission entered January 14, 1969, the name of this carrier was changed from T.I.M.E. Freight, Inc.), Transcon Lines and Roadway Express, Inc. of Mississippi (formerly West Brothers, Inc., modified by order of the Commission, entered March 18, 1970), to the exceptions of applicant in No. MC-106401 (Sub-No. 18); jointly by

Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Consolidated Freightways, Inc., Georgia-Florida-Alabama Transportation Co., Inc., Gordons Transports, Inc., Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Yellow Freight System, Inc., to the exceptions of applicants in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67); jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Transcon Lines, Holloway Motor Express, Inc., T.I.M.E.-DC, Inc., Consolidated Freightways Corp. of Delaware, Akers Motor Lines, Inc., Yellow Freight System, Inc., and Braswell Motor Freight Lines, Inc. to the exceptions of applicant in No. MC-94201 (Sub-No. 56), embracing a renewed motion to strike appendixes A and B to exhibit 1985; jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Campbell Sixty-Six Express, Inc., Transcon Lines, Gordons Transports, Inc., Braswell Motor Freight Lines, Inc., Akers Motor Lines, Inc., Georgia-Florida-Alabama Transportation Co., Inc., and T.I.M.E.-DC, Inc., to the exceptions of applicant in No. MC-2229 (Sub-No. 132); separately by Deaton, Inc., to the exceptions of applicants and interveners; separately by Jack Cole-Dixie Highway Company (by order of the Commission, entered October 31, 1968, the names of merged protestants Jack Cole Company and Dixie Highway Express, Inc., were changed to Jack Cole-Dixie Highway Company) to the exceptions of applicants; jointly by Alamo Express, Inc., Central Freight Lines, Inc., and Red Arrow Freight Lines, Inc., to the exceptions of applicants in Nos. MC-11207 (Sub-No. 233), MC-76177 (Sub-No. 304), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18); jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Roadway Express, Inc., of Mississippi to the exceptions of intervening shippers; and separately (late tendered) by ET&WNC Transportation Company to the exceptions of applicants in Nos. MC-76177 (Sub-No. 304) and MC-94201 (Sub-No. 56).

APPENDIX D

Pleadings

In its exceptions, Herrin contends that the examiners erred in considering all applications on an erroneous concept that all must be granted or all denied and in finding that a grant of the Herrin application would result in a realignment of the traffic patterns and competitive relationships of existing carriers. Herrin submits that it does not seek to extend its operations beyond its present territory but seeks only to serve seven specific points which are actually intermediate under Herrin's presently authorized operations. Inasmuch as Herrin can now provide service to and from Atlanta, assertedly a grant of authority to and from this point would merely allow it to use all feasible routes for the operations. It believes that the examiners erred in concluding that the transit studies and related testimony, as a whole, do not warrant the conclusion that the existing service is inadequate to meet the real needs of the shipping public in the territory involved in the Herrin application. Herrin excepts to the findings and conclusions of the examiners that it failed to prove that the public convenience and necessity require the grant of its application, and it submits that in considering the criteria for selection of applicants it is a logical choice.

Red Ball contends that the examiners erred in concluding that the 933 public witnesses failed to establish a need for additional carrier service and that a grant of its

application would have an adverse affect on existing carrier service. Assertedly, the 130 public witnesses presented by Red Ball, the additional 24 witnesses called by other parties but testifying in support of Red Ball, and the additional 19 witnesses who testified in support of all applications clearly demonstrate a need for this applicant's proposed service. It is contended that the inequity of the examiners' handling of this proceeding is demonstrated by their failure to even discuss that portion of Red Ball's proposal which was unopposed. Applicant submits that protestant East Texas has filed an application in MC-41432 (Sub-No. 103) seeking authority substantially indentical to that sought by Red Ball. Assertedly, this demonstrates that this protestant has ceased to believe that there is no need for additional authority in the territory involved herein. Red Ball further contends that the examiners erred in concluding that all of the applications must be treated together and in not giving complete and fair treatment to the individual applications. It submits that neither the carriers opposing its application nor the applicants in this proceeding can provide the extensive single-line service proposed by Red Ball between those points presently served by it in Mississippi, Louisiana, Arkansas, Texas, New Mexico, Colorado, and Kansas City, Kans.-Kansas City, Mo., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville. And, assertedly, it is the one applicant in this proceeding that can and will solve the problem of bringing to the smaller cities, towns, and communities adequate and proper transportation service to and from major points of supply and distribution such as Atlanta and Birmingham. Red Ball is willing to have "Performance Report" conditions similar to those imposed in ***West Brothers, Inc., Extension—Baton Rouge, La.***, 106 M.C.C. 792 (1968), as modified in 108 M.C.C. 485 (1969), imposed on a grant of authority to it. Finally, it asserts that of all the applicants it is best suited, equipped, and establish, and can, at less cost, perform the service between the points it proposes to serve.

In its conditional exceptions, Deaton submits that if this record discloses a public need for additional service between Atlanta and Birmingham, on the one hand, and, on the other, Dallas and Houston, it believes that a grant of its application would be a necessary corollary to the granting of one or more of the other applications. The filing of its application is described as an effort to keep pace with fundamental realignment of existing motor carrier operational patterns in the Southwest which would result from the granting of any or all of the eight applications it opposes.

On exceptions, Strickland contends that the examiners erred (1) in recommending a denial of the Strickland application, (2) in failing to evaluate the merits of Strickland's application separate and apart from consideration of the proof offered by other applicants, (3) in equating growth in existing carriers with capability to adequately meet the growing transportation requirements of supporting witnesses; (4) in finding that where complaints of service failures had been made to existing carriers remedial action has been taken; (5) in finding that the evidence does not warrant the conclusion that the quality of service proposed by applicants would be sufficiently superior to that of existing carrier services to support a grant of the operations proposed; (6) in placing undue emphasis throughout their report on the fact that various applicants to the consolidated proceedings were also protestants to other cases instead of considering established criteria for proving public convenience and necessity in each instance, especially with respect to the application made by Strickland; and (7) in finding that the granting of the Strickland application would result in a material adverse affect on existing carrier services, and could put Red Line out of business.

Baggett, in its conditional exceptions, indicates that initially it was a "defensive applicant" and was willing to withdraw its application if all other applicants agreed to

do the same. When it became clear that the other applicants would not withdraw their applications, Baggett indicates that it became a "serious applicant." Baggett contends that the 40 public witnesses who supported its application proved a definite need for direct, single-line service as related to their respective businesses. It believes that a grant of its application would be a necessary corollary to a grant of any of the other applications and it indicates that exceptions were filed to avoid a situation in which its application would stand finally denied while one or more of the other consolidated applications are pending final decision.

Bowman contends on exceptions that the examiners erred (1) in considering all 10 applications collectively, and neglecting and failing to relate the testimony to the Bowman proposal or to give effect to the multiple complaints directed toward existing carriers; (2) in considering and treating the testimony only in relation to commodities shipped to the substantial exclusion of territories and points involved; (3) in failing to consider the divisible aspects of the Bowman application; (4) in failing to recommend approval of the Bowman proposal to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Kansas City, Springfield, and Carthage, Mo.; (5) in failing to recommend approval of all aspects of the Bowman application; and (6) in arriving at ultimate conclusions and basing their recommendation on broad generalities without specific findings as to the basic facts of record. With respect to the divisibility of its proposal, Bowman contends that only three general-commodity carriers and one specialized carrier have any interest in the proposal to serve the Kansas-Missouri area, and only seven carriers are interested in the Mississippi portion of its proposal. It asserts that the strongest case presented by any applicant was of a need for additional motor carrier service between the authorized Bowman territory, on the one hand, and, on the other, (1) the 10 named Mississippi points, and (2) Topeka and Kansas City, Kans., and Kansas City, Springfield and Carthage, Mo. It is pointed out that more public witness (137) testified in support of the Mississippi portion of the Bowman proposal than appeared for all aspects of 7 of the 10 applicants and more than all witnesses combined of 3 of the applicants. Bowman believes that if the application had been filed simply for authority between its territory in the South and the aforementioned Missouri and Kansas points, it would have received a grant of authority. Assertedly, the 82 witnesses which supported this portion of the application have experienced every conceivable type of difficulty with the existing motor carrier service. Bowman submits that only four carriers hold general-commodity authority between the involved Kansas-Missouri area and any portion of the Southeast, and only three of these carriers, viz. Gordons, Watson-Wilson, and T.I.M.E., oppose this portion of Bowman's application. Furthermore, it is contended that these three carriers, while they hold extensive authority in this area, collectively serve only a limited number of points in Alabama, Tennessee, Georgia, and South Carolina. Bowman submits that even if these carriers served every one of their authorized points, there would still be no service, (1) from the entire State of Florida; (2) from points in Georgia south of U.S. Highway 80; (3) from points in South Carolina north of Greenville, Columbia, and Charleston; and (4) from the entire States of North Carolina and Virginia.

On exceptions, Johnson contends that the examiners erred (1) in generally merging throughout their recommended report their consideration, findings, and conclusions respecting the evidence relating to the Johnson application and the other consolidated applications and thereby failing to evaluate and make adequate findings and conclusions relating to the Johnson application as a separate and independent matter; (2) in finding, on the basis of their erroneous treatment of the applications as a group,

that there is no public need for the service proposed by the Johnson application because existing service is adequate; and (3) in concluding, on the basis of their erroneous treatment of the application as a group, that the benefits of the service proposed by the Johnson application would be outweighed by the material adverse affect that a grant of the Johnson application may have upon existing carrier services. Johnson submits that in restricting service to the transportation of traffic moving from, to or through Atlanta and Gulfport, Miss., it proposes only an "overhead" operation between present system points, on the one hand, and, on the other, points on the proposed service routes. The proposed "overhead" operation assertedly would provide needed single-line service to and from designated major points in Texas, Louisiana, and Mississippi for traffic originating at or destined to points on Johnson's present system in the States along the Atlantic seaboard and in the Gulf of Mexico territory, without, at the same time, overextending its operations to a multitude of smaller points which can be served adequately in cooperation with local carriers. Johnson submits that it was the first applicant to propose an "overhead" single-line service between these two areas. It is submitted that the Deaton, Baggett, and Floyd & Beasley proposals to serve the same southwestern points do not involve an "overhead" service between the eastern seaboard and the Southwest and these applications were filed as defensive measures. The Johnson application assertedly presents issues quite different from those involved in the applications filed by Herrin, Red Ball, Jones, and Strickland since these other applicants operate in the Southwest and seek to extend their authorities only to the gateways of Birmingham and Atlanta. While Bowman's application involves similar issues, Johnson indicates that this carrier does not serve points in New England and western Pennsylvania which Johnson does serve. Bowman, unlike Johnson, does, however, serve the gateways of Memphis, Tenn., and Birmingham. It is submitted that Bowman's proposal extends much further territorially than that of Johnson. Johnson indicates that only Roadway and Ryder offer single-line service between points on the eastern seaboard, on the one hand, and, on the other, points Johnson proposes to serve.[1] However, it is contended that these carriers are highly selective in the traffic they will handle and they are not able to serve all of the points Johnson presently serves. Further, Johnson contends that in view of the fact that after the commencement of these proceedings Roadway was authorized in another proceeding to acquire substantially the same rights which it is seeking herein, regardless of any possible diversion from the carriers protesting the Roadway application herein, it would be a miscarriage of justice for the Commission to deny Johnson's application because of its possible effect on Roadway. Although several east coast carriers (Pilot, Mason and Dixon, ET&WNC, Mercury Motors, and Carolina) participated in this proceeding they did not oppose Johnson's application. Additionally, it is pointed out that such major east/south carriers as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, McLean Trucking Company, and R.C. Motor Lines failed to participate herein. Johnson contends that inasmuch as an important segment of the joint-line system did not protest the Johnson application and neither evidenced the service they have available nor its adequacy or the impact upon them of a grant of authority, there is no substantial evidence in the record to support the examiners' findings that there is available existing joint-line service adequate to meet the needs of the shippers.

On exceptions, Jones contends that the examiners erred in failing to find that the public convenience and necessity requires its proposed operation entirely or in part. Specifically, it contends that while the examiners found that a need is shown for additional service relating to less-than-truckload (LTL) shipments of commodities requiring refrigeration, including meats, candies, and pharmaceuticals, they erred in

[1] The operations performed under the McLean-Herrin merger are not included in the statement

failing to award the grant of such authority to this applicant. With respect to refrigerated service, Jones points out that it operates 111 trailers equipped with mechanical refrigeration, which is more than all of the other applicants collectively operate. It handles combination loads of perishable and nonperishable commodities in the same trailer and it presently provides LTL refrigerated service to a number of shippers. Assertedly, if the volume of refrigerated traffic shippers have shown to be moving is considered on an annual basis shipments to Atlanta would exceed 37 million pounds a year and approximately 4 million pounds would move annually to Birmingham. Annually, 10.5 million pounds moves outbound from Atlanta to points Jones is authorized to serve. At least one of the supporting shippers indicates that it cannot ship commodities requiring refrigeration from Atlanta to points in Arkansas and Mississippi during the summer months because refrigerated service is not available. Jones submits that it is the only applicant herein which presently provides LTL refrigerated service. With respect to existing service, Jones submits that the examiners erred in finding that the complaints were minimal and that shippers have recourse where carriers refuse to render service. Jones indicates that it is not interested in traffic moving between Atlanta and Birmingham and it is willing to have a grant of its application restricted accordingly. Also it expresses a willingness to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature controlled trailers. Finally, Jones contends that if the involved application were not heard on a consolidated record, it would have received a grant of authority.

The 41 intervening shippers which support the Johnson application, in their jointly filed execptions, contend that the examiners erred in recommending a more cooperative effort between carriers and shippers as a substitute for competition. Assertedly, the examiners should have found that both the public convenience and necessity and the national transportation policy encourages competition among carriers as a means for improving inadequate service. Further, interveners maintain that the examiner erred (1) in concluding that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier; (2) in determining public convenience and necessity by placing considerations of possible detriment to existing carriers through increased competition ahead of benefit to the public; (3) in concluding that "the primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public"; and (4) by sidestepping the consideration of "monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public ***." Interveners submit that suppression of competition runs counter to both the letter and spirt of the Federal antitrust laws; that only where the intent of Congress is clear and manifest has subsequently enacted regulatory legislation exempted specific practices from the operation of the antitrust laws; and that absent such a showing, the antitrust laws are applicable to a situation where, as here, through the denial of additional service, a monopoly is assured to those carriers already in the field in a particular area. Assertedly, the Commission should reverse the examiners's decision and grant the application of Johnson. Because of the complexity of this proceeding and its importance in terms of public interest, the intervening shippers request that oral argument before the Commission be granted.

Campbell and Gordons, protestants, in their jointly filed "conditional"[1] exceptions to the report but not the order of the examiners, contend that the examiners erred (1) in failing to find that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments; (2) in failing to find that Bowman's proposed joinder of present irregular and proposed regular routes to render scheduled LTL service is contrary to Commission policy, and that a grant of this application would result in Bowman being authorized to serve between the same points over regular and irregular routes; (3) in failing to find that the proposed joinder of irregular and regular routes by Floyd & Beasley, Baggett and Johnson is contrary to Commission policy; and (4) in failing to find that the applications of Red Ball, Baggett, and Jones present joinder problems.

In reply to the exceptions of Bowman, protestant Pilot contends that this applicant now will take anything it can get in the way of a grant. Its proposal to serve named Mississippi, Kansas and Missouri points assertedly is merely an attempt to gain the benefits of serving key traffic points without being burdened with having to serve rural and undeveloped points. Pilot submits that the examiners correctly found that public convenience and necessity do not require the operation for which authority is sought.

In reply to the exceptions of applicants, protestant Ryder contends that Johnson's "overhead" service between large points only is somewhat of a distinction to the degree that Johnson is the most selective carrier and has the proposal least responsive to the alleged transportation needs of the areas involved; that supporting shippers express a need for service between numerous small points; and that in light of Johnson's service to New Orleans, this carrier is incapable of rendering reasonable service even to large points. Ryder maintains that its service, in terms of transit times, is vastly superior to Johnson's between points served by both carriers. Even if the Johnson application were the only one to be granted it is maintained that this carrier would have the opportunity to effect all of the potential diversion. With respect to Red Ball, Ryder contends that this carrier's argument that no single protestant can serve all of the points served by it ignores the fact that there are available in the area involved numerous single-line services as well as hundreds of joint-line services. Assertedly Bowman, after admitting that its case is lost, seeks a "consolation prize", viz. authority to serve specified points in Mississippi, Missouri, and Kansas. While this applicant maintains that Ryder serves only the Mississippi points of Jackson, Meridian, Laurel, and Hattiesburg, Ryder indicates that, as pointed out by the record, it serves points in Mississippi, in addition to those described above. It is submitted that the examiners wisely, properly, and intelligently resolved the few basic issues. Protestant believes that a grant of any of the applications would either cause the involved traffic to move slower because of the dilution of available freight to the carriers involved or would cause no change at all.

Mercury and East Texas, in their joint reply to the exceptions of applicants and of intervening shippers, contend that while the record shows instances of good and bad service by both applicants and protestants, as a whole, the record demonstrates that the examiners correctly concluded that the existing service is reasonably adequate and satisfactory on the whole and that the *status quo* should be preserved by denial of the applications. Assertedly, the record also shows that none of the applicants can perform on a consistent basis a service any more expeditious or dependable than that

[1] Protestants request that if exceptions are filed by the applicants treated in their pleading, the "conditional" exceptions be considered by the Commission. On the other hand, if any of these applicants fails to file exceptions, the pleading may be disregarded by the Commission. Campbell does not participate in this pleading to the extent that it is directed to the application of Bowman since the former withdrew its opposition to the latter's proposal.

which is presently available normally to the shipping and receiving public by existing carriers. With respect to the exceptions of Jones, protestants submit that a grant of authority limited to the transportation of less-than-truckload (LTL) shipments requiring refrigeration could not be economically performed by Jones. Strickland, it is submitted, fails to make any specific record citations to support its claims of error. Herrin assertedly has failed to show any error in the recommended denial of its application and it is submitted that this carrier has now been authorized to extend its system operations from Macon, Ga., into Atlanta by purchase. To substantiate its contention that it would be adversely affected by a grant to Red Ball, East Texas submits that the record shows that in a 1-year period it transported 20.5 million pounds from Atlanta to Dallas, Tex., and 19.6 million pounds in the reverse direction. East Texas indicates that it has over 270 million pounds of annual traffic at stake. Assertedly, Johnson's service record demonstrates that it could not meet the proposed service standards. Protestants point out that although intervening shippers' exceptions make statements of fact, there are no citations to the record and inasmuch as the pleading does not, therefore, comply with rule 96(a) of the Commission's General Rules of Practice it should be stricken or rejected, or given little or no consideration. Additionally, protestants assert that the request of Johnson and the intervening shippers in support of the application of Johnson for oral argument should be denied inasmuch as the issues are not complicated and relate principally to a question of fact.

Johnson, in reply to the contentions of Campbell and Gordons that this application should be denied because it involves the bridging of regular routes with an irregular route, as well as the joinder of regular and irregular routes, submits that its proposed regular routes join its present system at New Orleans, La., and Atlanta, which points are located on its present regular-route system, that any bridging operation over highways in irregular-route territory, if it takes place at all, will be confined to truckload traffic, that it does not propose to directly join proposed regular routes with existing irregular-route authority; and that although it does tack regular with irregular-route authority at common service points, it preserves the character of the respective authorized services. With respect to the conditional exceptions of Deaton and Baggett, Johnson submits that the former did not show the impact upon it of a grant of only the Johnson application and the latter did not prove that a grant of the Johnson application also warrants a grant of the Baggett application. Replying to the exceptions of Herrin, Red Ball, and Strickland, Johnson asserts that its proposal to serve "key points" should not be regarded as "slighting" the small community. Instead, Johnson submits that it is a practical solution to the maintenance of reasonably adequate service in the transportation of small shipments at large cities as well as to the medium and small communities in the Southwest. Single-line service will be provided to the large communities proposed to be served and Johnson will provide the long-haul portion of joint-line service for the shippers and receivers located at the medium and small communities in the Southwest. It indicates that it has obtained from proposed connecting carriers an indication of their willingness to cooperate in the plan.

In their joint reply to the exceptions filed on behalf of Johnson, certain protestants[1] contend that Johnson's proposal, as tested by Johnson's performance, is not realistic. They contend that Johnson's testimony, that its entire operation was to be converted from a relay operation to a sleeper-type of operation is of no value since Johnson failed to introduce into evidence any indication of the progress under the proposed change in its operation, if in fact, such change actually took, or will take, place.

With respect to Johnson's contention that it proposes an "overhead" service between the eastern seaboard and the Southwest, protestants submit that a great many

[1] Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West.

of this application's supporting shippers testified about Texas, Louisiana, and Mississippi, and about nowhere else. Of the remainder, assertedly the vast majority involved service between Atlanta and Texas points. Protestants maintain that the traffic moving between points sought to be served by Johnson is open to diversion if the Johnson application alone is granted. Furthermore, inasmuch as the Texas area is primarily a consuming area and not a manufacturing area, there is an imbalance of traffic and a grant of the Johnson application would further dilute the east-bound traffic. With respect to Johnson's request for oral argument, protestants submit that the proceeding does not present a very complex problem and that the request, therefore, should be denied. It is requested that the examiners report and recommended order be adopted.

Certain protestants,[1] in a joint reply to the exceptions of applicants Deaton, Baggett, Jones, Strickland, and Herrin submit that the exceptions of Deaton and Baggett do not comply with the Commission's General Rules of Practice and do not merit serious consideration, and that not only did Jones, Strickland, and Herrin fail to submit evidence demonstrating that they are rendering the type of service proposed between comparable points but assertedly the record demonstrates their inability to perform the proposed services. Protestants concede that the record demonstrates that there is a need for LTL service on commodities requiring refrigeration. They assert, however, that a grant to Jones or any other applicant to transport such commodities is not warranted by the record. It is submitted that Jones made no proposal to handle this type of traffic exclusively and its only proposal was to transport general commodities and it was dependent upon the establishment of substantial terminals at Birmingham and Atlanta. Assertedly, an operation limited to the handling of commodities requiring refrigeration would not justify the opening of such terminals. Protestants maintain that it would be totally unrealistic to assume that any carrier would successfully operate if such a grant were restricted to the transportation of LTL shipments and even if such authority were not restricted to the handling of LTL shipments it would be unrealistic to assume that Jones, or any other general commodity carrier, could operate over these long routes[2] transporting only refrigerated commodities. With respect to supporting shipper evidence, protestants submit that there are numerous instances wherein the public witnesses either had not investigated the availability of existing services or had failed to use that service, including the service of the supported applicant, that the criticisms of existing service relate to applicants as well as protestants; that some of the complaints about protestants' services which applicants cite in their exceptions leave erroneous implications; that the transit time studies support criticisms of applicants', as well as protestants' services; and that even if, assuming *arguendo*, the service specified shippers were receiving at the time of the hearing was unsatisfactory, additional single-line services[3] have been instituted since the close of the hearing. Assertedly, the effect of a grant of any of these applications

[1] Akers, Braswell, Campbell, Consolidated, Georgia-Florida-Alabama, Gordons, Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E., Transcon, and Yellow Freight.

[2] To illustrate, protestants submit that on its route from Atlanta to Greenville (428 miles), Jones proposes service to only one intermediate point, Birmingham.

[3] Protestants submit that such additional single-line services include four between Atlanta and Dallas, Tex., three between Atlanta and Houston, Tex., five between Atlanta and Baton Rouge, La., four between Atlanta and Jackson, Miss., four between Atlanta and New Orleans, La., two between Atlanta and Kansas City, two between Atlanta and Monroe, La., and two between Atlanta and Little Rock, Ark.

will not be limited to service to the major points proposed to be served by applicants. It is pointed out that the ability of one of the protestants to perform a reasonably adequate service to innumerable smaller points in a specified State is directly dependent upon the economic stability of its service from and to the larger terminal points applicants propose to duplicate. No applicant proposes to render a local distribution service out of any proposed service point. Protestants submit that this Commission should condemn the practice of selectivity advocated by applicants inasmuch as it only increases the problems confronting distribution carriers. In light of the fact that Hefrin can now perform much of the service it proposes to perform herein, protestants maintain that there is no need for a grant of this application. They submit also that when considered in the context of the large number of distribution centers and tremendous amount of traffic involved, an extremely small percentage of shippers and receivers within the involved area actually supported these applications.

In their joint reply to the exceptions of Bowman, certain protestants[1] initially request that official notice be taken of 18 specified motor carrier changes in the involved area that have been approved and authorized since the close of the hearings in this proceeding in August 1967. Protestants contend that no new service should be authorized within this area until all of the new services have been tested and found wanting. Assertedly, Bowman has conceded that it has failed to prove that the public convenience and necessity require any new service to the Texas points from the Southeast. And, it attempts to justify a grant of authority to 10 Mississippi points[2] even though it has not presented any operating proposal under which it could be granted authority to serve only the Mississippi points. Protestants submit that since the close of the hearing Campbell has established terminals at Columbus, Greenville, Greenwood, Hattiesburg, Jackson, and Meridian, and it renders direct service to Laurel; that Roadway-West has has established terminals at Greenville, Hattiesburg, Jackson, Laurel, Meridian, and Pascagoula, and it renders direct service to Greenwood and Moss Point; and that Braswell has established terminals at Jackson and Vicksburg and it renders direct service to Meridian. They contend that if assuming, *arguendo*, supporting shippers have shown that there was a need for additional single-line service between the 10 Mississippi points and Atlanta, such need has been more than adequately met by the introduction of the new single-line services that have been instituted since the close of the hearing. Assertedly, Bowman realizes that it has not shown a public need for additional single-line service to Mississippi on this record since it has subsequently filed an application for authority to serve Mississippi points. With respect to Bowman's allegation that there is public need for additional service between specified Missouri and Kansas points and the Southeast, protestants submit that since the close of the hearing two additional single-line carriers, Campbell and Consolidated, have commenced to provide service between Atlanta and Kansas City, and that another new carrier should not be authorized to serve these points until these new services have been tried and found wanting. Bowman assertedly not only failed to establish that it could provide the scheduling proposed, but it established that it was not providing the service it was holding out under its existing authority. Further, it is submitted that Bowman's application proposes the overlapping and intertwining of regular- and irregular-route authority contrary to the policies set forth in *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23, affirmed 80 F. Supp. 110, (S.D. Iowa 1948); affirmed 35 U.S. 875 (1948). If the Bowman application is granted, some protestants assertedly would be adversely affected. It is submitted that

[1] Roadway, West, Transcon, Holloway, T.I.M.E., Consolidated, Akers, Yellow Freight, and Braswell.

[2] Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Pascagoula, and Vicksburg, Miss.

Holloway would not be able to continue service inasmuch as it receives 71 percent of its operating revenue from a shipper which supports Bowman for service to Kansas City and Topeka notwithstanding the admission of the shipper that Holloway's service is satisfactory. Protestants maintain that inasmuch as Bowman did not except to the examiners' finding that Holloway could not survive if Bowman's application were granted it concedes this fact. Finally, they renew their motion to strike appendixes A and B to exhibit 1985.

Certain protestants,* in their joint reply to the exceptions of Red Ball, contend that the lack of record references to evidence to substantiate claims of error is, in and of itself, fatal to these claims. Protestants submit that there is much more traffic moving inbound to Texas than moving outbound to the Southeast since the Texas area is primarily a consuming area, and not a manufacturing area. A grant of one or more of these applications, assertedly would dilute the eastbound traffic and could very well result in the inability of existing carriers to continue to provide the type and caliber of service that they are presently providing. Since the close of the hearing, Braswell, Herrin, Mercury, and T.I.M.E. have been authorized to render single-line service between Atlanta and Dallas, Tex.; Braswell, Herrin, and Mercury have been authorized to serve between Atlanta and Houston, Tex.; Mercury, Braswell, Herrin, Campbell, and Roadway-West have been authorized to serve between Atlanta and Baton Rouge, La.; Braswell, Campbell, and Roadway-West have been authorized to serve between Atlanta and Jackson, Miss.; and Braswell, Campbell, Herrin, and Roadway-West have been authorized to serve between Atlanta and New Orleans, La. Protestants maintain that the motor carrier growth has far outstripped any economic growth of this area. With respect to serve at small points in Texas, it is submitted that receivers located at these points will receive better service by having the long-haul carriers transport traffic destined to these points, to major Texas points such as Dallas, Houston, or San Antonio for interchange with a distribution carrier such as Red Ball. Even if Red Ball's application were granted, it is pointed out that this carrier would be required to break bulk at Dallas or Houston on shipments destined to these small Texas points.

Deaton, in its reply to the exceptions of Herrin, Red Ball, Strickland, Baggett, Johnson, Bowman, Jones, and intervening shippers, contends generally that nothing in these exceptions seriously detracts from the correctness of the examiners' decision or supports any result different from that recommended by the examiners. It submits that if any new authority is granted between Atlanta and Birmingham, on the one hand, and, on the other, New Orleans, Memphis, and points in Mississippi, more than $3 million of its annual revenue would be subject to diversion. If only the Johnson application were granted, Deaton indicates that it could be deprived of annual revenues of at least $190,000. A grant of the Red Ball application would assertedly have a greater impact than a grant of the Johnson application. Strickland's proposed single-line service is in direct competition with Deaton's single-line service in the above-described area. Deaton submits that Herrin, notwithstanding its purchase of authority into Atlanta and its subsequent merger into McLean, seeks authority herein for a short service route between Memphis and Atlanta through Birmingham. A grant of authority to render a new single-line service over the Atlanta-Birmingham-Memphis route to Herrin would assertedly subject Deaton to annual revenue losses of approximately $275,000. Furthermore, it is submitted that there is a paucity of support for a new service between Atlanta, Birmingham, and Memphis. With respect

*Roadway, West, Campbell, Transcon, Gordons, Braswell, Akers, Georgia-Florida-Alabama, and T.I.M.E.

to Bowman's plea for a partial grant. Deaton maintains that Bowman's attempt to serve points in Mississippi does not constitute a separate proposal. Instead, it is maintained that service to and from points in Mississippi is proposed only as incidental intermediate point service on its routes. Additionally, Bowman has filed a separate application seeking authority to serve Hattiesburg, Jackson, Laurel, and Meridian, which have a combined population of about 280,000. Under the more recent proposal it does not seek to serve the six other Mississippi points in question which have a combined population of approximately one-half of the four above-described Mississippi points. It is suggested that the question of whether there is a need for service at the involved Mississippi points be resolved in Bowman's more recent application and not herein. Deaton contends that the examiners correctly found that the need for improved and additional service in the transportation of commodities requiring refrigeration is not "sufficient to support a grant of general commodity authority ***." It is submitted that a grant of authority to transport LTL shipments of commodities requiring refrigeration, as indicated in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967), is unacceptable as a matter of law and sound regulatory policy. In conclusion, Deaton maintains that the examiners' findings and conclusion should be affirmed.

In reply to the exceptions of applicants, Cole-Dixie[10] generally contends that all of the applications should be denied; that any grant of new competing authority will jeopardize its ability to continue serving the public between the points it is authorized to serve; that its services are adequate to meet the needs of the shipping public; and that no valid reason exists for an award of competing authority. It is submitted that consolidation of all 10 applications has obtained for the Commission its first opportunity to consider (1) the adequacy of all existing motor carrier services between two of the major economic geographic regions of the United States, and (2) whether there is a need for additional service between those areas. Cole-Dixie submits that the applicants complain about the consolidation only because the inadequacies of their existing services are revealed. Also it it maintained that although existing service is adequate, applicants request new authority that would rearrange the entire route structure and drastically change the competitive situation between the carriers in the Southeast and Southwest. Assertedly, applicants, in a desperate effort to salvage something from this proceeding, argue collectively that in some geographic areas, opposition is less extensive than at other points; that single-line service is required to and from small points; that its proposal consists of a service which the individual applicant considers unique to its operation; and that the impact of a grant would be lessened if specified restrictions or limitations were imposed. Cole-Dixie submits that these arguments are admissions of failure to prove need for the service as proposed. It is concluded that inasmuch as 52 percent of Cole-Dixie's combined revenues are obtained on traffic moving between terminal points at which one or more of the applicants proposes to render a new service, approximately 50 percent of Cole-Dixie's traffic would be subject to diversion. The application of Red Ball poses the greatest threat of diversion to Cole-Dixie inasmuch as the former is Cole-Dixie's largest interchange connection for the subject traffic and is, therefore, in the best position to take the most traffic away. Protestants indicate that they are both losing money and that a loss of traffic, particularly to the western carriers which control so much

[10] By order served October 9, 1968, in No. MC-F-10107, Jack Cole Company and Dixie Highway Express, Inc., were merged and the surviving corporation's name was changed to Jack Cole-Dixie Highway Company. When the context requires, Cole and Dixie will be treated as two separate carriers.

eastbound traffic, will worsen the balance problem within Cole-Dixie's southern network and will cause even further unprofitable operations. It is urged that the recommendation of the examiners be affirmed.

Alamo, Central and Red Arrow, in their joint reply to applicant's exceptions, adopt the replies to the exceptions filed by Mercury and East Texas; Akers and other specified protestants; and Roadway. Protestants submit that the examiners' conclusions and findings should be affirmed.

In their joint reply to the exceptions of intervening shippers, certain protestants[1] list a number of changes in motor carrier service in the area involved to show the "fluidity of the situation and the complete lack of the predetermined rigidity on the part of the Commission which is apparently the basis of the intervenors' positition." Protestants submit that they opposed the intervention since the interveners were raising issues which had not been raised on brief and, therefore, had not been submitted to the examiners. In renewing their objection they indicate that they do not, by replying to interveners, waive or forego any contentions heretofore made in their opposing pleadings. With respect to interveners' contention that existing carriers hold a monopoly of the traffic moving between the cities Johnson desires to serve direct, protestants submit that there was no monopoly at the time of the hearing, and since the hearing the quantum of service in the involved area has increased greatly. Furthermore, protestants cite *York Interstate Trucking, Inc., Extension—Muriatic Acid*, 67 M.C.C. 626, 628 (1956), and *Transport, Inc. Extension—Sioux Falls, S. Dak.*, 81 M.C.C. 751 (1959), for the proposition that even assuming that the existing carriers hold a monopoly, the mere existence of a monopoly, standing alone, would not justify the establishment of a new operation without a showing of inadequacy or some inferiority in the service of existing carriers. Protestants maintain that no need for additional service has been shown since interveners generally either do not know of or have not used the service of existing carriers. With respect to the examiners' alleged finding that existing carriers must be accorded an opportunity to remedy deficiencies in service before additional service is authorized protestants submit that the examiners neither made such a finding, nor did they place possible detriment to existing carriers ahead of any public need. Assertedly, the findings and conclusions of the examiners should be affirmed.

Bowman, in reply to the conditional exceptions of protestant Gordons, contends that its proposed restrictions are understandable; that they do not fall within any of the categories proscribed by the Commission in *Fox-Smythe, supra*, and that they would accomplish the result intended by their proposed imposition. It submits that Gordons' contention, that, because some of Bowman's present authority is irregular route, it should not be granted regular-route authority, is without merit. Furthermore, this contention is moot because Bowman, in MC-94204 (Sub-No. 86), seeks to convert its existing irregular route authority to regular-route authority.[2]

ET&WNC, protestant, in reply to the exceptions of applicants Bowman and Baggett, submits that the latter is not a serious applicant; that the former failed to establish the feasibility of its proposal; that Bowman's contention that portions of its application should be granted demonstrates that Bowman recognizes that it has not met its burden of proof and is wholly without merit inasmuch as the proposal was an integrated service proposal which must be viewed as a whole, and that Bowman, in its exceptions, ignores the material adverse effect which replicant, among other protestants, would experience from the diversion of traffic resulting from a grant of the application.

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[1] Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West.

[2] As noted in the report herein, Bowman's conversion application has been granted.

APPENDIX C

Summary of evidence of supporting shippers

ALABAMA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
1. (1) Thompson-Weaver Co., Inc., Mobile, Ala. Industrial agricultural and vitamin chemicals, rubber processing and fiberglass sizing.	From New Orleans to Mobile each motor shipper receives about 12 shipments. Traffic consists of about four truckload (TL) shipments and between six and eight less-than-truckload (LTL) shipments averaging 2,500 pounds a shipment.	Bennett, Baggett, and West Brothers.	Shipper has difficulty in getting Baggett to pickup shipments in New Orleans and in getting West to deliver in Mobile. Since October 1971, no Pace deliveries to Mobile from the East, this carrier is used from New Orleans only to a limited degree. One instance of inadequate service by West was documented.	Harris, Kinser and Johnson requested to intervene if there is any carrier service other than that it is using from New Orleans to Mobile. It transports the bulk of its TL traffic from New Orleans to Mobile in its private equipment.
2. (2) Olin Chemical Company, Mobile, Ala. Heavy duty industrial and marine cleaning compounds.	From Mobile to Lake Charles, La. and Port Arthur, Galveston, Corpus Christi, and Houston, Tex. Between 1/1/72 and 9/1/72, shipper moved 8,597 pounds to Lake Charles, 46,836 pounds to Port Arthur, and 78,296 pounds to Houston. It ships monthly to Lake Charles, weekly to Port Arthur, and twice a week to Houston, usually it ships to Baton Rouge, La.	Central Interlining with Pyder to Lake Charles, Red Ball, direct to Port Arthur and Baton Rouge. Bonded and Dixieland have used in the points they serve. Mercury interlines with Central to Galveston and Mercury interlines Alamo to Corpus Christi.	Shipper received transit time complaints on 25 per cent of its shipments to Lake Charles. It complains that Mercury has held freight for Houston in its terminal overnight, and that Red Ball is slow in paying claims. While Mercury's service to Houston is generally adequate, shipper believes that Harris would give better service.	Harris, Bonner, and Johnson
3. (33) Thomas Foundries, Birmingham, Ala. Dredge pumps, parts, rock crusher parts and allied items.	From Birmingham to Pine Bluff and Lake Village, Ark., Baton Rouge and Monroe, La., Crystal Springs and Greenville, Miss., and Houston, Tex. It has approximately 800 shipments a month with an average weight of 300 pounds moving to the inland Arkansas and Mississippi points and to Monroe, between 50,000 and 100,000 of mostly LTL shipments move monthly to Baton Rouge. Shipper also has five or six shipments a month to the Houston area, weighing between 5,000 and 10,000 pounds each. Shipper has movements of scrap from Houston to Birmingham, and it has a possible movement of scrap from Baton Rouge to Birmingham. It also states that it has movements to other points in Louisiana and Texas and to points in other States that Bonded and Strickland proposes to serve. Approximately 20,000 pounds a year moves to Kansas City and Topeka, Kans.	From Birmingham to Baton Rouge, most originates and interlines with Gordons at New Orleans. On shipments to Houston East Texas is utilized. Mayball is used as originating carrier on shipments to Kansas City and Topeka. Most is used to points in Mississippi. Occasionally Mercury handles shipper's traffic from Birmingham to Houston.	Shipper requires flat-bed equipment because its pumps, which weigh between 10,000 and 30,000 pounds, are loaded by overhead crane. Also, most of the inbound scrap must be unloaded by overhead crane. It expresses a need for Deaton's proposed secondary service to Baton Rouge and Houston. Shipper has occasionally received complaints on shipments to Kansas City and Topeka.	Deaton, Strickland, and Bonner. Transit time from Birmingham to Baton Rouge is generally 2 days. The service of West to points in Mississippi is described as excellent. Shipper did not know of any single-line service between Birmingham, on the one hand, and on the other, Kansas City and Topeka.
4. (33) Tenneco Shoes, Inc., Johnstown, Ala. Children's shoes.	From Johnstown to Houston, Austin, San Antonio, El Paso, Dallas, and Beaumont, Tex. All traffic moves in LTL lots on a daily basis with the average 600, including about 2,750 pounds. About six shipments move a day with each weighing between 125 pounds and 6,000 pounds and with the average shipment weighing about 450 pounds.	Baggett originates shipper's traffic. The services of Bell Transfer, Inc., Motor Express and the Southern Railway have also been used. T.I.M.E. and East Texas handle some of shipper's traffic.	Shipper wants single-line, 2- or 3-day service from Johnstown to Texas. It states that there is no single-line service available from Johnstown to Houston, Dallas, Beaumont, and Fort Worth. Complaints are received about once a week during the busy seasons. On the shipments complained of, transit time to Texas was between 5 and 8 days.	Baggett. Shipper did not investigate to determine whether the delay was on the part of the originating delivering carrier.
5. (35) B.F. Goodrich Company, Akron, Ohio Synthetic rubber, carbon black, and tires.	Inbound to its Tuscaloosa, Ala., plant shipper moves by rail mostly (between two and five percent moves by rail) synthetic rubber from Port Arthur, Tex., and carbon black from Houston, Tex. Between two and three million pounds moves inbound each month. Outbound from Tuscaloosa, shipper moves tires to Houston, Fort Worth, and Dallas, Tex. About one million pounds a month moves to these points. One half of this traffic is handled by truck and the remainder is handled by rail. The former are TL lots weighing between 30,000 and 30,000 pounds. Additionally, shipper has about 15 LTL outbound movements totaling about 35,000 pounds. Shipper also moves about 750,000 pounds of tires a month from Tuscaloosa to Atlanta, Ga. The amount of tires also moves through Atlanta to points east thereof. About [illegible] percent of outbound LTL shipments move to the Dallas-Fort Worth area with the remainder moving to Houston. Approximately 15 percent of the TL shipments move to Houston.	Dixie and Alabama Highway Express handle shipper's traffic to Atlanta. The latter also handles traffic which is interlined at Atlanta. Campbell originates shipper's traffic moving to points in Texas and interlines it at Memphis, Tenn. Dixie also originates shipper's traffic and interlines at Memphis. Service Express originates outbound traffic and interlines at Birmingham. Mercury interlines at Birmingham, and delivers shipper's traffic to Houston. Deaton is used on traffic moving into and out of Atlanta.	Inbound, applicant's service would be used on supplied shipments only. On traffic would be diverted from the rail carrier. Shipper maintains a warehouse in Atlanta and it expresses a need for single-line service on tires moving from Tuscaloosa both to this warehouse and to customers located at Atlanta. Dixie has terminated noncompetitive with a number of carriers which interline at Atlanta. Shipper believes that it would be better to have two or three carriers available.	Baggett. Shipper does not know of any single-line service between Tuscaloosa, on the one hand, and, on the other, Dallas, Fort Worth, and Port Arthur. It acknowledges that Ryder holds single-line authority from Houston to Tuscaloosa but it does not plan to use Ryder because of the service and because the carrier no longer has a terminal at Tuscaloosa. Shipper is satisfied with Roadway's service. It has not used Wall-Roadway through Birmingham outbound.
6. (29) Montgomery, Ala.	See Shipper summary under Georgia heading.			
7. (30) Decatur, Ala.	See Shipper under South Carolina heading.			

[1] The number in the parentheses is the witness number utilized by the examiners.

Summary of solicitation of supporting shippers — Sec. 13a

HARRIS—Docket [illegible]

Shipper, location and commodity	Orig. pts., dest. points, volume, type and frequency of traffic	Existing serv. as utilized	Reasons for supporting application	Opp. & reasons supported and remarks
8. (52) Montgomery Industry, Incorporated, Birmingham, Ala. Hardware	[illegible] shipments of merchandise for the first 8 months of 1965 originating at Birmingham, weighing a total of 48,419 pounds, to Dallas (2 weighing 747 pounds), Dallas (2 weighing 1,071), Houston (1 weighing 1,458 pounds), and Waco, Tex. (17 weighing 14,143 pounds), Greenville (6 weighing 15,200 pounds), Tex.; Duncan (16 weighing 16,871 pounds), Gulfport (6 weighing 858 pounds), Jackson (7 totaling 3,975 pounds) and Natchez, Miss. (4 weighing 1,911 pounds). Imports (7 weighing 525 pounds), Harrison (7 weighing 12,795 pounds) and Little Rock, Ark. (8 weighing 1,617 pounds); and Kansas City, Kans. (15 weighing 7,683). Shipper also receives inbound traffic from Hattiesburg and Biloxi, Miss., Alexandria, Bismarck, and Harvey, La., Bentonville, Ark., and Sulphur Springs, Tex. The shipments weigh between 148 pounds and 6,394 pounds. Outbound shipments move from Birmingham to, among other points, New Orleans, Franklin, Alexandria, Avondale, and White Castle, La.; Pascagoula, and Vicksburg, Miss., and Tilden, Tex. Outbound shipments weigh an average of between 1,000 and 12,000 pounds each week.	Southern Railway, Illinois Central, Atchison, Topeka & Santa Fe, Missouri Pacific, Louisville & Nashville, Southern Pacific, Texas & Pacific, Kansas City Southern, Gulf, Mobile & Ohio, Chicago, Rock Island & Pacific, Frisco, and Rock Island. Shipper also has a private truck fleet which [illegible] between Birmingham and Montgomery.	Shipper wants single-line service between Birmingham and the points [illegible]. [illegible] Shipper says that [illegible] service [illegible] but has [illegible] and transport from [illegible] factories, [illegible] to the warehouses. Shipper [illegible] to [illegible] [illegible] shipper prefers to bring [illegible] because it [illegible] [illegible] shipper's automated billing system, [illegible] of services is more important. Shipper [illegible] [illegible] in case of [illegible] of existing service. Some of the carriers serving shipper are restricted to two- or three-axle [illegible].	Ex. Rail and motor.
9. (53) The Lamson & Sessions Company, Birmingham, Ala. Bolts and nuts.	From Birmingham during the first 7 months of 1965, shipper had shipments to Amarillo, Tex. (a total of 157,270 pounds), Lafayette (11,765 pounds), and Mansfield (37,794 pounds), La.; and Pine Bluff (92,099), and Fort Smith, Ark. (29,320 pounds). The shipments move in TL and LTL lots.	To Louisiana, shipper uses Ryder, West, East Texas, and Baxter or TL. To Texas, it uses Ryder, East Texas, Mercury, Lago, and Transcon. To Arkansas it uses Jordan, Campbell, East Texas, and Seaton. Specifically, Transcon serves Amarillo on LTL shipments and Lagniappe on TL traffic. [illegible] interlining with Red Ball, is used to Lafayette. Ryder handles the Mansfield traffic. Campbell handles the Pine Bluff traffic. It is also used on the Fort Smith traffic, sometimes interlining with Jordan at Memphis. Rail service is used for volume shipments to the [illegible] points.	Shipper wants additional service to Amarillo because Transcon takes part pick up shipper's traffic at Cinn. To Lafayette, and Mansfield, shipper wants single-line service. It is not aware of any single-line service to these points and it wants to eliminate the present interchange. Shipper's customer in Amarillo requires scheduled deliveries on Sat. It says its assembly line working. Shipper has had difficulty in getting Campbell to make a pickup. In addition to its regularly scheduled pickup, shipper needs more steady service because its customers place orders based on a 3- or 5-day delivery service.	Red Ball. Shipper's support of this application is limited to Amarillo, Lafayette, Mansfield, Pine Bluff, and Fort Smith; shipper is not supporting application to the remaining points. Mercury provides good service to Houston.
10. (?) Henry Pattern and Foundry Company, Birmingham, Ala. Iron castings.	From Birmingham shipper has between 5,000 and 10,000 pounds weekly moving to points in Texas. The traffic is mostly LTL with the average shipment weighing between 500 and 2,000 pounds. About 10,000 pounds a month moves to Houston.	To Houston shipper uses East Texas and Mercury.	Inconsistency of service is important because shipper's product is used in the construction of buildings. Seaton has promised second-day delivery on closing weekends and holidays to points in Texas.	Red Ball and Seaton. Shipper has used Seaton's service and has found it satisfactory.
11. (56) Reed Steel Products, Inc., Birmingham, Ala. Ala Agricultural feed handling equipment and commercial storage equipment.	From Birmingham shipper makes semi-monthly LTL and TL shipments to Houston and to points within 10 miles of Houston. It reported to dominate shipping within 1 months of the year is to Beaumont and Texas City, Tex., shipper has distributors at Houston and Eagle, Tex. It indicate that it serves all of Texas.	Shipments to Houston move in private equipment or in Eagle or Mercury. To [illegible] private carriage is used more a month.	Shipper wants Seaton's proposed second- and third-day service to points in Texas. Shipper requires flat-bed trailers to handle its TL movements.	Seaton.
12. (58) Republic Steel Corporation, Gadsden, Ala. Iron and steel articles.	From Gadsden shipper has traffic moving to numerous Texas, Louisiana, Arkansas, Oklahoma, and Missouri points. During 1964 it shipped 7,272 tons in both TL and LTL lots to points in Texas. In the first quarter of 1965, it shipped 12,700 pounds to named points in Arkansas), 3,000 pounds to Missouri; 17,000 pounds to Oklahoma; and 9,9[illegible] pounds to Texas. All of this traffic was LTL (excluding TOFC during the same period it had TL shipments, including TOFC, to Arkansas (1,[illegible] tons); Louisiana (1,03[illegible] tons), Missouri (203 tons), Oklahoma (94 tons), and Texas (373 tons). Most of shippers traffic moves in TL	On TL traffic to Texas points, [illegible] customs freight on [illegible] origin/destination, interlining with Eagle at Birmingham. Superior handles it on single-line service. Shipper uses mostly irregular-route common carriers	Shipper wants single-line service to Seaton from Gadsden to Houston. It requires [illegible] flat-bed equipment with high sidewalls.	Red Ball, Brenner, and Baggett. Shipper is not seeking split ops. service to additional points.
13. (62) JACOB Power Equipment Co., Birmingham, Ala. High voltage electrical	From Birmingham, shipper has between 10 and 12 LTL shipments a month to Denver, Houston, Orange, and Texas City, Tex. The average shipment weighs between 1,000 and 5,000 pounds. About 80 percent of its shipments	Mercury or East Texas to single-line or joint-line service	Shipper's customers do not normally stock the [illegible] commodity and often the customer requests switches to [illegible] shipment or repair [illegible] the [illegible] is	Seaton. Shipper could not cite an instance when it lost any business due to a lack of transportation service to the destination territory.

Shipper, location, and commodities	Via motor carrier, type of service, and traffic	Existing service, etc., used	Reasons for supporting application	Application supported and remarks
62) (Con. [illegible] to No.	[illegible] Texas have come to Houston.		Scheduled. Also shipper's storage facilities are [illegible] of shipper feels that it needs the services of an additional carrier to give [illegible] flexibility.	
(Ex Member [illegible] Chamber of Commerce, Montgomery, [illegible] Ala. [illegible]	[illegible] Texas, in carload and truckload lots, Houston, [illegible], and Fort Worth, during a 6 [illegible] 1,000 pounds [illegible] 30 pounds [illegible] 60 pounds [illegible] 1,000 pounds and [illegible] to other Texas points. All of these shipments were LTL, with the average shipment weighing 750 pounds.	Hunt, Colo, AAA Motor [illegible] and connections are used.	Shipper wants a direct, single-line service. It feels that such service would [illegible] a month [illegible] rate-wise. Is also flexible to damage.	Baggett. Shipper did not know of any single-line service from Montgomery to points in Texas. It was not aware that Academy serves from Montgomery to Houston, Ala., and other Texas points in single-line service.
1 (16) Universal Oil Division of Cities and Gulf Coast Consolidated Copper Corp., Houston, Ala. Copper, brass, and aluminum tubing.	From local or to Houston, Dallas, Beaumont, and Fort Worth, Tex. Each week 50,000 pounds move to Houston, 2,000 pounds to Beaumont, and 150,00 pounds collectively to Dallas and Fort Worth. The majority moves in TL weighing approximately 30,000 to 32,000 pounds. Some moves in LTL weighing from 500 to 1,500 pounds each. Shipper planned to expand its Decatur facility and expected an increase of 25 percent in its business. About 10 or 15 percent of its shipments are rail shipments. About 90 shipments of T. Jots move to Houston weekly and between four and six TL shipments move to Dallas monthly. The remainder of the traffic is LTL.	Lyndrum, Ryder, Baggett, Mercury, and the L & N Railway. Also shipper uses its two units of private equipment occasionally on shipments to Texas. Ryder renders single-line service to Houston and Gardner renders single-line service to Dallas and Fort Worth.	Shipper prefers single-line service. It has experienced difficulty in obtaining equipment from the authorized carriers, including Baggett. The majority of its shipments must be moved in open-top equipment.	Baggett.
6 (76) Hewitt-Robins, Inc., Division of Litton Industries, Birmingham, Ala. Motor chains, gear reducers, sprockets, rubber hose and belting, conveyor rollers, and allied articles	Outbound from Birmingham to Houston, Beaumont, Texas City, De Kalb, Fort Worth, and other Texas points. In April and May of 1966, it shipped 8,000 pounds to Houston, 400 pounds to Beaumont, 300 pounds to Texas City, and 1,800 pounds to Dallas and Fort Worth, Tex. The figures are not representative because it ships to these areas only to supply shortages at its Houston and Dallas warehouses. The shipments are all "truck" LTL, averaging about eight a week with each shipment weighing about 136 pounds. Inbound, shipper receives at Birmingham emergency shipments from its Dallas and Houston warehouses. The inbound shipments total as much or a little more than the outbound shipments to these points.	Baggett, Mercury, and East Texas.	Transit time is important since the traffic consists of "rush" shipments. Shipper prefers direct, single-line service. The services of Mercury and East Texas have met these requirements, including weekends and holidays. Shipper expects second-morning delivery.	Baggett
17 (75) Tuscaloosa, Ala.	Any shipper under Texas heading			
18 (81) Piedmont Wood Products, Birmingham, Ala. Aluminum components for screen, door, and window frames.	From Birmingham to numerous specified points in Arkansas, Missouri, Kansas, Mississippi, Texas, Louisiana, Oklahoma, and Illinois. Each week shipper has 10 movements to points in Arkansas with the average shipment weighing 500 pounds. There or four a week to Kansas, with the same weight, three to four a week to Kansas weighing the same as above, one or two a week to Mississippi moves shipments to Texas, and it has a warehouse at Dallas (in 1965 it moved 150,907 pounds to Dallas and through June 9, 1966 it moved 103,228 pounds). Four or five a week to Oklahoma with the same average weight, four or five shipments a week to Chicago, Ill., with the same average weight; about three shipments to Baton Rouge and Shreveport, with a week weighing the same average weight as described above.	To Arkansas, East Texas, Campbell, Allen and Red Line are used in single-line service. Thomas and Campbell are used to Missouri; Ryder to Baton Rouge, East Texas to Shreveport; Campbell to Mississippi, Dawkins and Mercury to Texas; and Transcon to Oklahoma. The single-line service of Gardner, Ryder, Baker, and Campbell are used to Chicago.	Shipper prefers single-line service, transit time is important because customers do not maintain large inventories. Shipper complained about (1) a shipment handled by Campbell to Springfield, Mo., on which 12 pieces were missing and later delivered, and (2) long transit times (namely, (a) one shipment picked up in East Texas on 6/29/66, was not delivered to Shreveport until 7/5/66 (includes a weekend), (b) one shipment picked up by Campbell, 5/3/66, was not delivered at Kansas City until 5/6/66 (includes a weekend), (c) one shipment handled by Dixie and Red Ball was picked up 7/20/66 and as of 7/25/66 was still on Dixie's dock at Birmingham, and (d) one shipment picked up at Springfield, 5/19/66, was not delivered to Birmingham until 6/26/66 (includes a weekend).	Baggett, Jones, and Bowman. Shipper is aware that single-line service is available to Baton Rouge and to Shreveport, La., and Houston and Beaumont, Tex.
19 (82) Jones Manufacturing Company, Birmingham, Ala., sanitary sprinkler	From Birmingham to Baton Rouge (2,000 pounds a month), Lake Charles (2,000 pounds a month), Houston (2,000 pounds a month), New Orleans (1,500 pounds a month), Shreveport, La. (500 pounds a month), Greenwood (1,000 pounds), Hattiesburg (500 pounds), and Vicksburg, Miss. (800 pounds), and Fort Worth and Houston, Tex. All are LTL. Shipper had six or eight shipments a week to New Orleans weighing a average of between 300 pounds and 3,000 pounds. Between 10 and 12 shipments a month move to Mississippi having the same average weight as those to New Orleans. It ships 1,000 pounds a month to Fort Worth and when it ships to Houston it moves 3,000	Most heading shipper's locations traffic. Campbell is used to Greenwood. Hunt is used to Hattiesburg and Vicksburg and Mercury is used to Fort Worth and Houston. Dixie and Ryder have been used to New Orleans. East Texas is used to Fort Worth.	Shipper wants overnight service from its plant to the Mississippi points and to New Orleans, second-day service to the other Louisiana points and not later than third day service to the Texas points. It complains that Hunt does not render satisfactory transit time and that it has had to trace shipments handled by that several times over the last 2 to 3 years. Shipper's customers purchase only small "fill-in" orders from it and they want quick delivery. It has not been	Jones and Jones. Shipper has satisfactorily used Bowman's service to points not involved here. It indicates that existing service from Birmingham to Houston is satisfactory. Shipper is aware that from Birmingham to New Orleans it has available the services of Ryder, Campbell, Hunt, and Dixie. It indicates that it would consider using Baggett's recently-instituted single-line service from Birmingham to New Orleans.

Summary of evidence of support [illegible] proto- [illegible]

CLARKS—Cont'd.

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services	Reasons for supporting [illegible]	Miscellaneous supporting comments
9. (82) [illegible]	pounds. Shipper is principally concerned with traffic to New Orleans.		Shipper [illegible] service from Birmingham [illegible] Shipper [illegible] of the shipments tendered to Clark between [illegible] were shipments to New Orleans, and [illegible] to [illegible] Natchez, Meadville, La., and to Jackson, Miss. The following weekend three shipments to New Orleans were delivered in 1 day, eight in 2 days, three in 4 days, and one in 5 days.	
10. (83) Southeastern Tool and Die Company, Inc., Birmingham, Ala. Aluminum materials used to produce aluminum window screen frames	From Birmingham to specified points in Missouri, Kansas, Arkansas, Mississippi, Louisiana, Oklahoma, Illinois, and Texas. Approximately 30,000 pounds moves each week to points in States between 9/13/66 and 9/6/68, shipper had movements to Little Rock, Fort Smith, and Pocahontas, Ark., Kansas City and Springfield, Mo., and Greenwood, Miss. All of the shipments were in LTL lots. Between 20 and 30 shipments move daily into the territory Bowman and Jones seek to serve. Their average weight would be between 300 and 500 pounds. Weekly, about 5,000 pounds will move to Missouri and Kansas; 6,000 pounds to Arkansas 1,000 pounds to Mississippi, 2,000 pounds to Louisiana; and 5,000 pounds to Texas	Orleans and Campbell are used to Missouri, and Kansas; Mercury and West to Texas; West and Campbell to Louisiana; Campbell and West to Mississippi; and Jordan, Campbell, and East Texas to Arkansas	Shipper wants next-day service to New Orleans and to points in Mississippi, and second-day service to other Louisiana points, Arkansas points, and to Kansas [illegible]. Shipper indicates that it has difficulty with delivery time and tracing a shipment handled by Jordan. It states generally that it has experienced poor delivery service with Campbell and that on a few occasions Campbell missed pickups. Shipper has received an unspecified number of complaints from customers located in the area Jones and Bowman seek to serve (the carrier or carriers involved are not specified).	Bowman and Jones. Shipper has used Bowman under its present authority and is satisfied with the service. Shipper indicates that most reasons good pickup and delivery service. It cannot recall a complaint regarding the service of West Mercury renders to shipper second-morning service to Houston and Dallas. Other than West and Campbell, shipper is not aware of any single-line service from Birmingham to New Orleans and points in Mississippi except Slade to Jackson, Miss. During June 1968 Commons handled about 30 shipments for Southeastern and none had to be traced.
11. (84) Union Envelope Company, Birmingham, Ala. Envelopes	From Birmingham shipments move to specified points in Arkansas, Texas, Louisiana, Tennessee, Missouri, Mississippi, Kansas, and Oklahoma. During May 1968 shipper had movements to Camden Jonesboro, Blytheville, and Little Rock, Ark., Memphis, Tenn., Houston, Dallas, and Fort Worth, Tex., Shreveport, Baton Rouge, West Monroe, and New Orleans, La., St. Louis and Springfield, Mo., Oklahoma City and Tulsa, Okla., Wichita, Kans., and Columbus, Jackson, and Greenwood, Miss. Shipper also has movements to Muskogee, Okla., and to and through Chicago, Ill.	West is used to Mississippi points and to New Orleans, La. East Texas is used to points in Arkansas, Texas, Tennessee, and Louisiana. Ryder is used to points in Texas and Louisiana. Jordan is used to points in Missouri and Texas. Thompson is used to Oklahoma, Arkansas, and Tennessee. Campbell is used to Mississippi, Arkansas, and Mississippi. West is used to Louisiana and Mississippi. Terminal Transport and Gordons are used to Chicago.	Shipper wants overnight service to points in Mississippi and to New Orleans, second-day service to other Louisiana points; second-morning service to points in Texas; overnight service to Little Rock, and second-morning service to other Arkansas points, overnight service to Memphis, Tenn., and second-day service to involved points in Missouri and Oklahoma. Although Campbell will pick up shipper's traffic for Little Rock, it waves the freight from Birmingham only on Monday, Wednesday, or Friday. Shipper introduced a "time study" on shipment handled by West to New Orleans, Baton Rouge and Jackson in January and February 1968. Excluding weekends, West's transit time was 2 days on 10 of 11 shipments to New Orleans, on 13 of 13 such points to Jackson, and on 2 of 3 shipments to Baton Rouge. Four of the remaining shipments to New Orleans were delivered in 3 days	Bowman and Jones. Shipper believes that only Campbell can originate shipments at Birmingham and deliver them to New Orleans for interline. Its support is limited to movements from Birmingham to Louisiana.
22. (98) State Farm Insurance Company, Birmingham, Ala., printed material and forms	From Birmingham to between 12 and 15 points in Louisiana on a daily basis. About 12,000 to 14,000 pounds moves each month to points in Mississippi and Louisiana and the average weight of a shipment is from over than 100 pounds up to 150 pounds. Shipper expects a 10 percent annual increase in the volume of its traffic. It maintains between 12 and 15 branch officers in Louisiana. More shipments move to New Orleans than any other Louisiana points.	Campbell and Daggett are used outbound. Campbell serves New Orleans in single-line service	Shipper wants single-line service. Time in transit is important since the printed material is dated. Shipper introduced a list of shipments from Birmingham to Louisiana points which were handled by Campbell and Red Ball, in interline service (interchanged to Red Ball at either Jackson, Miss. or New Orleans) between 5/28/68 and 6/26/68. The list is not all inclusive. Out of total transit times of between 1 and 8 days Red Ball's shortest time was between 1 and 3 days. Weekends were included. Shipper wants single-line second-day service to Houston	Van Dell. Shipper believes that only Campbell can originate shipments at Birmingham and deliver them to New Orleans for interlining. Its support is limited to movements from Birmingham to Louisiana.
23. (104) Greif Bros. Cooperage Corp., Cullman, Ala. Steel products.	From Cullman to Houston. Shipments move every 10 days in mostly TL lots. Shipper's volume of LTL movements is increasing	McComb originates the traffic and interline at Birmingham, Ala., with Mercury	Shipper wants single-line second-day service to Houston	Dunton. Shipper has not investigated whether it has single-line service from Cullman to Houston.
24. (106) Planet Southern	From Birmingham to Houston. Shipper has periodic movements. The LTL traffic varies between 1,000 and	Superior Trucking Company, Ryder, Daggett, Red Ball,	Shipper requires open-top equipment since the shipments are loaded by overhead	Dunton.

ALABAMA—(continued)

Shipper, location and commodities	Origin, destination, volume, type and frequency of traffic	Existing service	Reasons for support of application	Application supported or protested
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Summary of a number of supporting shippers—(continued)

ALABAMA—(continued)

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Remarks
32. (158) Con[illegible]	each shipment is between 100 and 1,500 pounds. The average shipment weighs about 150 pounds. Shipper expects its business to increase about 25 percent each year.	Campbell, Rex vest are used to points in Louisiana. Gateway is used to Arkansas, and Campbell, Easton, and West are used to Mississippi.	requested to operate [illegible] the W-Ky and Smith's [illegible] contract that could be used. Shipper prefers single-line service because it involves less handling and better transit times.	Shipper [illegible] uses [illegible] service from [illegible]
[illegible] Baloco Distributors Birmingham, Ala. Carpet and related commodities.	From Birmingham shipper has about two LTL movements a week to Baton Rouge, La. The shipments weigh from a minimum to 2,000 pounds.	Campbell and Ryder are used to Baton Rouge.	Shipper wants single-line service to Baton Rouge. Transit time is important because shipper's dealers do not have any stock. Shipper is not satisfied with the transit time being rendered by Campbell and no longer uses Ryder because the customer directs that Campbell be used. Single-line service is preferred.	[illegible] uses [illegible] Baton Rouge.
34. (159) Plastic Clad Corporation, Birmingham, Ala. Plastic coated tops and partitions in cartons.	From Birmingham to points in Texas including Beaumont, Houston, Orange, and Texas City. The shipments weigh between 50 and 600 pounds. Shipper has two movements a month to Baton Rouge.	To Houston, Mercury and Ryder have been used.	Shipper prefers single-line service. Transit time is important because the involved commodities are utilized in service stations, the construction of which is scheduled. Shipper's loading facilities are limited to two doors and it wants to utilize fewer number of carriers which serve it.	Easton. Shipper uses Easton's service to Mississippi.
35. (157) General American Transportation Co., Birmingham, Ala. Tanks, tank materials and parts and iron and steel.	From Birmingham to points in Mississippi and southern Arkansas. At the time of the hearing shipper did not have traffic moving but expected shipments to commence within 6 months of the hearing.	Shipper proposes to use both specialized carriers and regular-route carriers.		Strick and Shipper was not aware of any single-line service from Birmingham to the destination territory. It indicated that there are carriers capable of handling its traffic to some Mississippi points, and conceded that inasmuch as it had not had an opportunity to use the existing service it could not determine whether it was adequate. Strick and Shipper did not know exactly how many carriers operate daily between Atlanta and Birmingham. Shipper did not know that Transcon could render single-line service from California to Birmingham. It indicated that, if Mercury interlining with another carrier at Dallas could render [illegible] service on shipments from California, its needs would be met. Shipper did not know at what time of day the Atlanta consignor requests pickup service on the [illegible] instance regarding Velsec.
36. (158) James W. Clary Co., Birmingham, Ala. Electronic equipment and supplies, batteries, and television picture tubes.	Inbound from Atlanta to Birmingham shipper receives an average of 100 to 200 pounds a week. It also receives shipments from Los Angeles and San Francisco, Calif.	United and Georgia Highway are used from Atlanta.	Shipper wants 5-or 6-day service from California. If the application is granted it would route the California shipments through Dallas. Overnight service is required from Atlanta. United's pickup ships [illegible] at Atlanta a day late a few weeks before the hearing. Shipper uses United's service frequently, however, and indicates that this carrier renders overnight service only if it is sure that it does not have a timely pickup.	Beggett
37. (159) Builders Manufacturers Company, Birmingham, Ala. Metal doors and metal door frames.	From Birmingham, shipper moves 30,000 pounds a month to the Houston area and 40,000 pounds a month to Dallas. About 65 percent of the shipments to Houston move to Houston proper with the remainder moving to points located within 40 miles of Houston. About 75 percent of the Dallas area shipments move to Dallas proper with the remainder moving through Dallas to points within 200 miles of Dallas. The average shipment weighs about 4,800 pounds and it moves about twice a week to each of the two points.	Mercury and East Texas Transcon and Ryder were used. Connecting carriers handle the shipments from Dallas and Houston to their surrounding areas.	Shipper wants direct, single-line service from Birmingham to Houston and Dallas. Inasmuch as the involved commodities are utilized in scheduled construction projects, time in transit is important. Shipper expresses a need for second-morning service to Dallas and Houston. It indicates generally that the services of Transcon and Ryder are not satisfactory. The service of Mercury and East Texas are also described as unsatisfactory. Shipper indicates that in the 6 months before the hearing it had difficulty on two occasions in obtaining pickup service from Mercury. Its Dallas representative on one occasion in the 7 months before the hearing had to pickup a shipment at East Texas' dock in Dallas.	[illegible]
38. (160) Ace Neon Sign Company, Birmingham, Ala. Signs and sign materials.	Inbound to Birmingham, shipper receives between three and five shipments of sign materials a year, all of which are ordered on an emergency basis from Houston and Atlanta.	Beggett is used from Atlanta and Mercury from Houston.	Shipper wants overnight service from Atlanta and second-morning service from Houston. It introduced a transit time study on six shipments (which embraces all of the shipments it received during this period), delivered between 2/10/64, and 12/22/65. Beggett handled two of the shipments from Atlanta and Mercury handled the remainder, which moved from Houston. Beggett picked up one shipment on a Friday and delivered [illegible] the following	Strickland

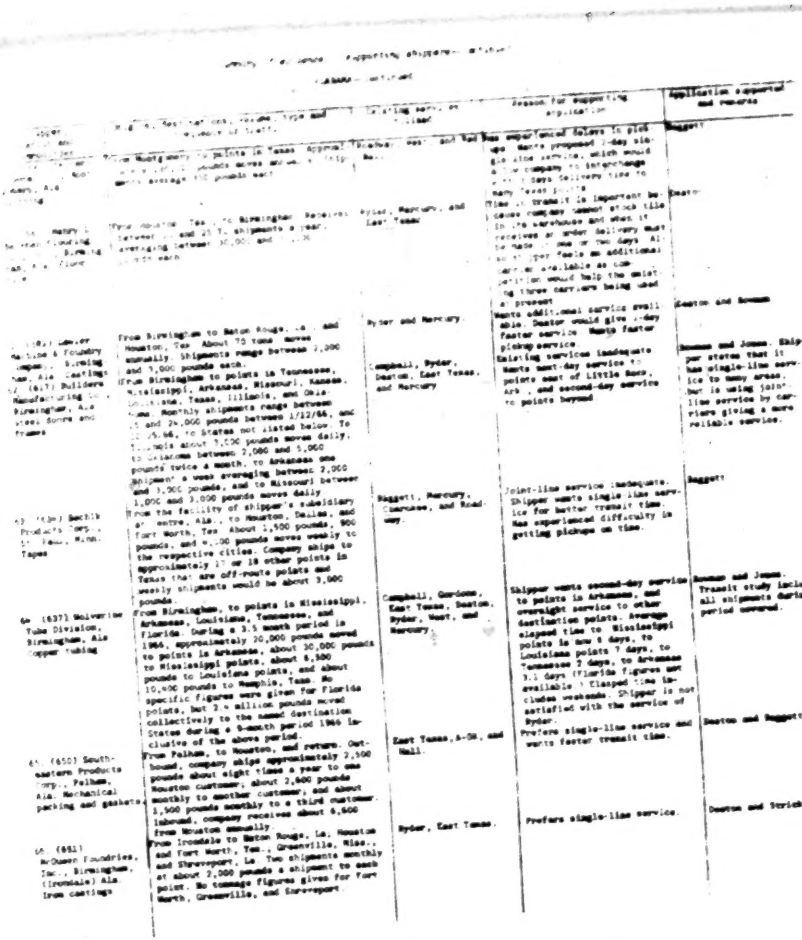
Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
40 (1[illegible] [illegible] [illegible]	[illegible]	[illegible]	Delivery. The delivery date on the other shipper handled by Baggett was disputed. Of the shipments delivered by Baggett, including overnight, two were delivered in 1 days, one in 2 days and one in 9 days.	[illegible]
70 (.621 P.C. Cake Company, Bryan, Ala. Corn	From Bryan during [illegible], shipper moved by [illegible] motor carrier 30,297 pounds (1 [illegible] shipments) to Dallas, 9,883 pounds (1 LTL shipments) to Fort Worth, 25,[illegible] pounds (4 LTL shipments) to Houston, and 143,000 pounds (1 TL shipments) to all other Texas points, which shipments were through Houston or Dallas. Shipper also have customers to pick up cakes at Beaumont, Port Arthur, Waco, Tyler, and Corsicana City. Tex. Almost all of the inbound traffic is TL, weighing from 100 pounds to 8,000 pounds. Almost 50 percent of its traffic moves in the last 4 months of the year.	[illegible] Baggett, Cole and Hall interlining with other carriers at Birmingham and Dallas, Ala. and Memphis, Tenn. Bag part originates most of shipper's traffic and the route is dec.ded by the carrier and Hall, Tennessee, Ryder and Hensley have been used on an interline basis Cothran interlining with A-CO.	Shipper has no direct single-line service to all Texas points it is not satisfied with the existing service because of poor transit times and tracing problems. Shipper would be satisfied with 4-day service to the destination territory	Support
66 (1[illegible] Southern Multiple Foods Union Springs, Ala. Cotton paper.	Inbound from Dallas to Union Springs. All shipments are rush. At the time of the hearing shipper had received one shipment from Dallas. The supplier has been unable to furnish all cotton paper needed from Dexter, Ga. and began to supply shipper from its Dallas plant. Shipper is expanding and expects to receive about 30,000 pounds a week from Dallas. The traffic would be nearly TL lots	[illegible]	Shipper wants a direct single-line service. It cannot obtain full sufficient stops for large orders and it is possible on government contracts if it does not meet the completion date on transit time is important	Support. Shipper has used applicant's service and describes it as satisfactory. It indicates that it would have no objection to using East Texas Motor Dallas to Birmingham and Baggett to Union Springs
7[illegible] (.[illegible] Southern Company, Montgomery, Ala. Plastic soap and film bags, department items, polyethylene containers for food storage and display racks	From Montgomery for [illegible] Mar 1966 shipper had [illegible] pounds to Houston, Tex., [illegible] pounds to Houston, 9,220 pounds to Fort Worth, Tex., 396 pounds to Beaumont, Tex., 420 pounds to Texas City, Tex., and [illegible] pounds to other Texas points. The LTL shipments weigh between 170 and 4,300 pounds and TL shipments weigh 40,000 pounds. During other months this volume doubles. Shipper is expanding its facility and expects the volume of traffic it ships to Texas to increase. All of shipper's traffic to points in Texas moved to or through Dallas and Houston. Of the above-mentioned tonnage to Dallas, 90,000 pounds was handled in private carriage	Support interlining with Tennessee. Shipper uses private carriage. East Texas, Ark. and Cothran and also used Cothran and Baggett originate shipper's traffic and interline it at Birmingham.	Shipper wants a direct single-line service. It maintained private carriage apparently because it was unable to obtain the type of delivery service it wanted from motor common carriers. If the application is granted and Baggett completes the proposed service private carriage will no longer be used to Texas and shipper will close its Dallas distribution facility. Shipper allows a minimum of 5 days for delivery to Houston, Dallas, and Fort Worth. It wants assured overnight service to points in the destination territory. Complaints have been received by shipper regarding the existing service.	Support. Shipper is entitled to have a choice of two-line carriers from Montgomery to the Texas destinations.
93. (179) AAA Movers, Inc., Montgomery, Ala.	AAA holds generally commodities authority and serves points in southeast Alabama. Has prior contracts for interlining are Montgomery and Birmingham, Ala. AAA transports Jonkoma on traffic moving between the points it serves in southeastern Alabama, including Birmingham and Montgomery, on the one hand, and, on the other, Houston, Tex. and points beyond. AAA wants to interline with Jonkoma at Montgomery. Presently AAA handles about 850,000 pounds of LTL and TL traffic between Houston and points beyond on the one hand, and, on the other, the area it serves in Alabama.	It interlines with East Texas, Cothran, Ryder, Hensley, and Tennessee at Birmingham	AAA has received complaints from its Alabama shippers that the existing interline service renders slow transit time. It suggested a need for the proposed combined overnight service from Montgomery to Houston. Shipper interlined a transit time study of some of the shipments it interlined in November 1965 from Houston. The shipments were interlined at Birmingham, except two which were interlined at Montgomery with Hunt including those two shipments and including seven cases where 95 percent of the shipments were delivered to Birmingham in 1 or more days and about 39 percent were delivered in 2 days. Those which were interlined with Hensley, East Texas, Ryder, Morris, Strickland, and Tennessee	Support. Johnson serves Montgomery and like AAA maintains a terminal at this point. AAA satisfactorily interlines with Johnson to points in the other carrier serves. AAA did not include in its exhibit any of the shipments filed by Hensley at Houston. In November 1965 it was the general practice for Hensley to call AAA when it had a shipment for the latter to pick-up at Hensley's dock. Although it drives its bill when it picks up the shipment at Hensley's dock, AAA stated that it delayed in making the pickup. It was surprised to learn that it was requested by East Texas on July 21, 1966, to make a pickup and had not made the pick-up on the day AAA was not sure whether East Texas was accustomed to the short not making a pickup the day it was called. AAA also drives its bill on the day it makes the pickup from East Texas. AAA could not cite a specific case where a shipment was delayed in transit to it by Hensley in the first 11 months of 1966. But Hall. While shipper indicates that it has had complaints regarding service, it was unable to name any of the points involved. Complaint's service is described as satisfactory.
43 (182) Birmingham Stove Stores & Range Company Birmingham, Ala. Cast iron hardware, gas heaters, cast iron hardware and ranges, cast iron, sheet aluminum, tin and steel furniture.	From Birmingham to points in Louisiana and Texas. Shipper has occasional movements a week to points in East Texas and Louisiana. None of its shipments are LTL and weigh up to several hundred pounds. Between 7/6/65 and 12/30/65, shipper had movements from Birmingham to Hemphill, Kirbyville, Kennard, Nacogdoches, Carthage, Beaumont, Jasper, Conroe, and Lufkin Tex.; and Tallulah, Springfield, Bruce Bridge, Hartsville, Columbia, Monroe, Oak Grove, Farmerville, Napoleon,	East Texas, Hensley, Ryder, Cothran, and Southern Railroad are used as origin carriers. Red Ball is used as a delivering carrier. Campbell is used to [illegible] Jackson, Miss., and the [illegible] Memphis. Ryder is used to Jackson and Ryder is used in addition. Like service to Louisiana points.	Shipper expresses a need for the proposed 3-day service originating at Memphis and Dallas to points in Louisiana and Texas. It believes that Red Ball will render better single-line service than the joint-line service it renders now. It feels that Red Ball will give preference to single-line movements. Shipper is not satisfied with the existing joint-line service. It prefers single-line service. A transit time study which does not reflect all of the Louisiana and Texas ship-	[illegible]

Summary of evidence of supporting shippers—continued

ALABAMA—continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
50. (29) Newton Brothers Lumber Company, Tuscaloosa, Ala. Wooden pallets	All involved outbound traffic from Tuscaloosa. 4 TL shipments to customers at Houston. During June and July 1966 about 660,000 pounds moved by rail to Houston, and approximately 180,000 pounds moved in shippers' leased equipment.	Leased trucks and rail.	Shipper expected increased business and desires to give up private carriage. One of the Houston customers has requested more truck deliveries in place of rail deliveries. Transit time is important because shipper's customers do not place orders for pallets until they need them.	Baggett. If the application is granted shipper would tender all of Houston traffic to Baggett.
51. (285) Fabrics, Inc., Montgomery, Ala. Bedding items, pillows, pads, and cottonseed	From Montgomery to Dallas, Tex. and other points in Texas.	Roadway's direct service. Joint-line service of A-OK and A.A.A. and Baggett from Birmingham.	Wants 2-day or third-morning service. Shipper no longer uses Roadway due to pickup delays.	Baggett. Shipper assumes single-line service will be quicker.
52. (340) Standard Brands, Inc., Birmingham, Ala. Grocery products	From Birmingham shipper has LTL movements to Vicksburg and Natchez, Miss., and Winnsboro, Delhi, Shreveport, Baton Rouge, Rayville, Alexandria, Pleasantville and Oak Grove, La. During March 1966 shipper had eight movements to Vicksburg weighing 5,225 pounds. Shipments to Winnsboro will average between 7,000 and 8,000 pounds and the average weight of each shipment is about 600 pounds.	Campbell, West, Cole, and Ryder originate shipper's traffic. Shipments to Mississippi and Louisiana points are not interchanged with Red Ball.	Transit time is important because shipper's customers maintain limited inventories. It prefers single-line service to avoid inconsistencies in transit times.	Red Ball.
53. (344) The Cornelius Company, Anoka, Minn. Vending machines	From shipper's Scottsboro, Ala. plant to points in the Southwest. The shipments are LTL.	Realine Exp. to Birmingham, and then Strickland. Ryder is used as an origin carrier.	Shipper uses a three-line haul to 19 destinations in Texas. If applicant were granted the authority, shipper's traffic would be handled by two lines. Other points in Arkansas and Louisiana, now served in two-line hauls will be served direct.	Strickland.
54. (544) Langenbach, Inc., New Orleans, La. Cartons	From supplier's warehouse at Birmingham to points in Louisiana, Arkansas, and Texas. Between three and four LTL and TL shipments move a month.	Morris, Ryder, and Deaton.	Joint-line service is described as inadequate. Shipper wants 2-day service.	Deaton.
55. (551) Dayton Sure-Grip & Shore Co., Birmingham, Ala. Wall tiles, concrete reinforcement, structural inserts, building anchors.	From Birmingham to points in Alabama, Arkansas, Tennessee, Louisiana, Texas, Mississippi, Missouri, and Florida. Shipments range between 24 and 13,129 pounds.	Gardens, Ryder, Mercury, East Texas, A-OK, West, Cole, Campbell, Greyhound, Dixie, Deaton, AAA, Baggett, Howard Hall, Trailways, and Ross Wesley.	Shipper wants overnight service to Little Rock and second-morning service to Dallas and Houston. It must now allow between 2 and 3 days load time for delivery to Dallas and Houston, Tex. Little Rock, Ark., and New Orleans, La.	Bowman and Jones. Shipper cited specific instances of inadequate service on the part of Campbell.
56. (553) Miller Wire Works, Inc., Birmingham, Ala. Wire products	From its plants at Birmingham and Houston to points in Mississippi, Louisiana, Georgia, Arkansas, Tennessee, and Texas. Also from Chicago and Joliet, Ill., to Birmingham and Houston, plant sites. Outbound shipments range between 500 and 600 pounds averaging about 200 shipments a month. Inbound shipments from Chicago move once or twice a month and average between 25,000 and 40,000 pounds. From Joliet shipments are received every 2 or 3 months averaging between 200 and 300 pounds.	Campbell, West, Ryder, Mercury, Gardens, and East Texas.	Shipper wants overnight service to points in Mississippi and Louisiana, second-day service to Arkansas, and third-day service to points in Texas. Average elapsed times from Birmingham to New Orleans is 4 days, from Birmingham to Baton Rouge 6 days, from Birmingham to Memphis, Tenn., 2.5 days, and from Birmingham to Shreveport, La. 3 days.	Bowman, Johnson, Strickland, and Jones. Transit time does not include all shipments which moved during the period in question.
57. (565) Texas Originals, Inc., Montgomery, Ala. Metal chairs	From Montgomery, to Fort Worth, Dallas, and Houston, Tex. During a 4-month period company shipped 1,590 pounds to Fort Worth, 580 pounds to Dallas, 390 pounds to Houston, and 4,073 pounds to points beyond Texas for a total of 6,481 pounds with shipments weighing between 100 pounds and 2,000 pounds.	Baggett, West, Red Ball, Campbell, Copperstate, and Roadway.	Shipper needs faster transit time. Single-line service to Dallas would allow company to connect to some points it cannot now reach.	Baggett.
58. (568) Continental Gin Company, Prattville, Ala. Cotton gin machinery and related parts	From Prattville to Dallas Tex. About 250,000 pounds moves annually, with shipments ranging between 56 and 3,000 pounds.	Baggett, Mercury, Transcon, and Private carriage.	Joint-line service inadequate because too many interchanges have caused delays in delivery.	Baggett. The involved traffic is seasonal.

114 M.C.C.



114 M.C.C.

Summary of evidence of supporting shippers—continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
67. (663) American Fence Co., Birmingham, Ala. Steel fence and posts	From Houston to Birmingham. Two shipments move monthly ranging between 3,000 and 5,000 pounds.	T.S.C.	Wants faster service in making delivery	Teston
68. (663) Moore-Handley, Inc., Pelham and Birmingham, Ala. Hardware merchandise	From plant sites at Pelham and Birmingham, to Mobile, Ala., and Pensacola, Fla. and from points in Illinois, Michigan, Pennsylvania, New York, Texas, and Mississippi, to Pelham and Birmingham. Outbound, about 10 million pounds moves annually to Mobile, and about 3 million pounds moves annually to Pensacola. Inbound, about 600,000 pounds moves yearly from Texas points, and about 1 million pounds moves annually from points in Mississippi.	G.F.A., Nelson, Campbell, Johnson, Strickland, Gordons, West, Cole, Ross Mosley, Associated, Central, and Southern Railroad	Wants faster transit time, such as proposed second-day service from Houston to Birmingham and Greenville, to Pelham. Average elapsed time from Texas points is 6.3 days, from Mississippi 3.3 days. Weekends included in elapsed time	Roadway and Strickland. Transit study only covers about 50 percent of shipments which moved between 9/21/66 and 12/25/66.
69. (662)-James A. Head & Co., Birmingham, Ala. Office equipment and supplies	From Wichita Falls, Carrolton, Tex., and Atlanta, Ga., to Birmingham. It receives 25 shipments monthly from each point.	Gordons, Transcon, and Georgia Highway	Needs faster service. Wants third-day service from Wichita Falls, second-day from Carrolton, and one-day from Atlanta. Average transit time, including weekends, is 6.7 days, from Wichita Falls, 5 days from Atlanta, and 5.1 days from Carrolton.	Strickland. Specific tonnage not given. Transit study includes all shipments during the period.
70. (663) Chemical Solvent Co., Birmingham, Ala. Chemicals and compounds, in drums.	From Birmingham to points in Mississippi, Louisiana, Arkansas, and Texas. Approximately 9,625 pounds moves annually to the destination States collectively.	Campbell, Ryder, and Buxton.	Needs faster service. Wants the proposed second-day service to Texas points, and overnight service to Mississippi points.	Strickland. Shipper's commodities require covered vehicles.
71. (673) Genesco, Inc., Huntsville and Florence, Ala. Clothing	From Huntsville, and Florence, Ala., to points in Texas. About 3.25 million pounds moves collectively from these points annually.	Gordons, Ryder, Red Ball, East Texas, Strickland, and Consolidated	Wants more consistent service and wants third-day service.	Baggett. Shipper is satisfied with Gordons' single-line service to Dallas, and it is satisfied with Roadway's service to some Texas points.
72. (674) Industrial Piping Supply Corp., Bessemer, Ala. Pipes, valves, and fittings	From Bessemer, to points in Mississippi, Louisiana, Arkansas, Florida, Tennessee and Texas. Fifty-eight shipments totaling 29,421 pounds moved collectively to the destination States between 3/31/66 and 6/30/66.	East Texas, Mercury, Campbell, West, Ryder, and Cole.	Prefers single-line service. Wants overnight service to Louisiana and Tennessee points, and second-day service to others. Average transit time to Tennessee is 3.8 days, and to Mississippi 4.9 days.	Bowman and Jones. Shipper made specific complaints against Campbell. Transit study includes all shipments during period covered.
73. (691) Wil-Mar Supply Co. Inc., Birmingham, Ala. Screws, fastening devices, grills, and registers.	From Fort Worth, and Winters, Tex., to shippers facilitities at Birmingham and Gadsden, Ala. Receives about 4,000 pounds a year from Fort Worth, and between 8,000 and 10,000 pounds a year from Winters, to Birmingham, with occasional shipments to Gadsden.	Red Ball, Cole, Sunset, and Gordons.	Wants between 1- and 3-day service from and to origin and destination points. Shipper states that present transit time averages "about-a-week."	Strickland.
74. (697) Boss, Ala	See shipper under Tex. heading			
75. (760) Phillips Supply Company, Gadsden, Ala. School furniture, fixtures and supplies, chairs, tables and trays, and restaurant equipment	From Conway, Ark., Kansas City, Kans., Buxton, La. and Dallas and Fort Worth to Gadsden. It receives from Conway 20 TL a year, from Kansas City 1 TL a month, from Buxton between 6 and 8 truckloads a year, and from Dallas 6 or 7 truckloads a year.	Holt, Jones, Bowman, Transcon, McCombs, Baggett, Boss, Kavanaugh, Ryder, Roadway, and Mercury.	Wants better transit time with less damage in transit. Average transit time about 4 days. Wants overnight or 2-day service from Conway, Dallas, and Kansas City. Wants overnight service from Buxton to Gadsden.	Bowman. Shipper transports a substantial portion by private carriage.
76. (804) Mason, Inc., Birmingham, Ala. Welding equipment and supplies	From Birmingham to points in Mississippi, and Louisiana. Shipped in excess of 100 LTL shipments to the above points from 8/3/66 to 11/15/66. Weight was from 40 to 500 pounds.	West, Campbell, and Ryder.	Present service is too inconsistent. Present transit time is from 1 to 3 days. Wants proposed overnight service.	Bowman.

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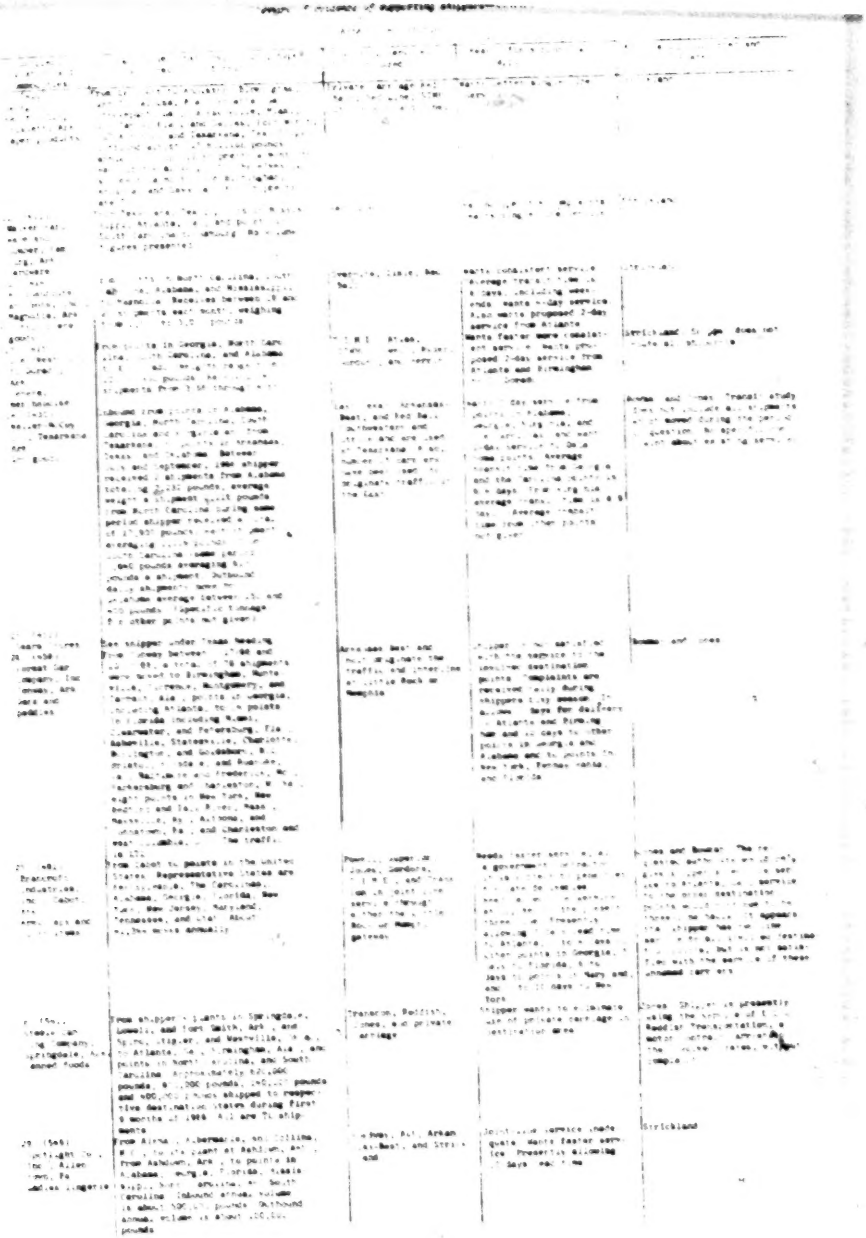
	From Bainbridge, Ga. to points in Mississippi, Louisiana, Arkansas, Texas, Missouri, and Kansas during the last 7 months of 1966 shipper made 56 shipments to the above points. Average weight is about 2,000 pounds From points in Tennessee, Arkansas, Texas, Mississippi, Colorado and Missouri to shipper's fertilizer located at Pelham, Georgia. Huntsville, Tennessee, West Gate, and Kimmy, Huntsville, Tennessee, and Grimsley, Ala., Pensacola, Miami, and Grimsley, Ala., Memphis, Chattanooga and Nashville, Tenn., and Atlanta, College Park and Decatur, Ga. Thirty LTL shipments weighing 17,[illegible] pounds were shipped between 12/13/66 and 2/2/67, as follows: To Mobile, Ala., from Miami, Tex. 1. From Forest City, Ark. 1. From Memphis, Tenn. 2. From Little Rock, Ark. 1. From Harrison, Ark. 1. From Kansas City, Mo. 1. From Greenwood, Miss. 1. To Orlando, Fla. 1. From Memphis, Tenn. 1. From Houston, Tex. 1. and from Greenville, Miss. 1. This amounts to 25 percent of traffic. This amounts to 25 percent of traffic from the points during the period of time covered.	Support. West Line, ETSW, Red Ball, Burks, Dealers Air Lines and Eagle	[illegible] service to two also 3 times a to 5 days for [illegible] are	Answer and [illegible]
86. (5868)Gadsden, Ala. 87. (908) Revere Copper and Brass Inc., Rome, N.Y. Aluminum articles	See shipper under Fa. heading From shipper's Scottsboro, Ala., plant to points in Mississippi, Arkansas, Louisiana, Texas, Missouri, and Kansas.	Shipper supported the plant to open in 1967.	Wants single-line service because competition has single line service. Wants overnight service to points within 500 miles and second-day service to points beyond 500 miles.	Answer. Bowman would not permit interchange with its connecting-rates. Shipper has supported other carriers but it appears that its supported shipments require the overall ability of several carriers. Since 1967 shipper has supported 14 carriers, including Rome Lines, Baggett, Boston, Colonial, Cole, Interstate and Eagle for service from Scottsboro. Roads converts--rome.
92. (910) Goodyear Tire & Rubber Company, Akron, Ohio. Tires and related goods	From shipper's Gadsden, Ala. plant to Rockmart, Cedartown, and Cartersville, Ga., Topeka and Kansas City, Kans., and New Orleans, La. In 1966 shipper moved 10.5 million pounds to Topeka, 1.1 million pounds to Kansas City, 3.9 million pounds from Topeka to Gadsden, and 30.8 million pounds from the three Georgia plants to Gadsden. Movements are 90 percent TL, and 3.7 million pounds moves from Gadsden to New Orleans annually	Holloway, Roadway Express, Ryder, Cole, Dixie and Boston.	Shipper wants more and better single-line service. Wants 2-day service on TL and 3-day service on LTL.	Answer. Bowman and Roadway. Holloway and Roadway serve shipper in single-line service between Georgia points and Gadsden. Roadway's route is circuitous. Many carriers serve New Orleans from Gadsden but shipper states that no carriers want to handle inbound freight.
93. (912) Gaston Chemical Company, Mobile, Ala. Chemicals 94. (916) United Sale Company, [illegible], Ala. Office chairs	From Mobile to Houston (10,000 pounds a week) and Port Arthur (5,000 pounds a week), Tex. Ninety percent of the traffic is LTL. From Leeds, Ala. to Dallas, Fort Worth, Beaumont, and Houston, Tex. In 1966 shipper moved in excess of 200,000 pounds of the above points. All shipments were LTL with an average weight of between 500 and 7,000 pounds	Mercury and Red Ball Support, Anniston, Red Ball, ETSW, and Mercury	Present service is too slow. Wants single-line service receiving 2-or 3-day service to Houston and Port Arthur. Prefers single-line service. Rate factor transit time. Single-line service would essentially lessen chances of damage	Support. Ryder can serve some of the involved points directly. Shipper does not recall the last time a customer complained about the delivery of shipments being delayed or damaged.

Shipper, location and commodities	Origin, destinations, volume and frequency of traffic	Routing for inbound traffic	Reasons for supporting	Reasons for opposing
1. (72) Murphy Furniture Company, Memphis, Ark. Furniture	Inbound from Atlanta, Ga. to Memphis on basis of its distribution of furniture from Atlanta. Shipper now orders its Texas parts from Alabama City, Ala. If rail satisfactory service from Rhea Atlanta, orders for truck parts would be placed at this point. Shipper receives LCL shipments from factories May with the shipments averaging 10 tons per week; a few months and several hundred pounds. It would order approximately 100 and 500 pounds weekly.	Red [illegible]	[illegible]	[illegible]
2. [illegible] Furniture & Carpet Company, El Dorado, Ark. Exporting and floor coverings	Shipper receives at El Dorado 3 or 4 [illegible] weeks a month, weighing 10K to 30K pounds each, from Dalton and Atlanta, Ga. It also receives shipments from Rome and Fredericksville, Ga.	[illegible]	It wants single-line service. Transit time is important to shipper since many of the [illegible] are at supplies have deadlines. A transit time study was introduced showing [illegible] February 2, and September 2, 1960, of some of its traffic, namely 8-ow interlined shipments, to El Dorado from Atlanta, Rome and Fredericksville, transit times were between 6 and [illegible] days including weekends. All the shipments were delivered by Atlas	[illegible]
3. (115) Lion Oil Co., El Dorado, Ark. Packaged petroleum products	From El Dorado 29 LTL shipments in May and June 1960 moved to and through Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. These shipments had an average weight of 7,382 pounds. Shipper moves about 13 TL a month in private carriage to points in Mississippi. It ships about 60,000 pounds a month by for-hire carriers to Birmingham and Atlanta.	On shipment to Alabama, Georgia, Florida, [illegible] South Carolina and North Carolina, Herrin, Red Bell, and Atlas originate the traffic and interline it at Memphis, Tenn. Private carriage is also used to points in Arkansas, Tennessee, and occasionally into Texas.	Shipper wants single-line reasonably [illegible] transit service. It commenced using private carriage to Mississippi after being informed by Arkansas-Best that this carrier no longer wanted to handle shipper's traffic through Greenville, Miss.	Strick [illegible]
4. (129) Remington Office Machine Company, Searcy, Ark. Office machines.	From Searcy to Atlanta, Ga. and Birmingham, Ala. Approximately 30 tons a year is shipped from Searcy to Atlanta and between 12 and 15 tons a year from Searcy to Birmingham. The shipments are a LTL and weigh between 40 and 800 pounds. Shipments are made to Atlanta approximately twice a week and to Birmingham weekly. Traffic also moves to New York, N.Y., Philadelphia, Pa., Richmond, Va., and Miami, Fla.	Powell originates the traffic and interlines at Memphis, [illegible] with Gordons, T.I.M.E., Herrin, Ryder, and Bowman. Springerdyer, a freight forwarder, and Roadway are used for delivery of shipments to New York interlining at Memphis.	Shipper wants 3-day service to Atlanta. It is not satisfied with the existing service to this point. Shipments would be originated by Powell and interlined at Little Rock, Ark. with applicants. Shipper's [illegible] has a warehouse in Atlanta so time in transit is an important factor. Complaints have been received with respect to transit times to Birmingham and some orders have been canceled. Shipper also complains about the transit times to the other spots to which it ships.	Bowman and Jones. Bowman presently interlines with Powell at Memphis. If its application were granted the interline point would become Little Rock. Shipper is not satisfied with the existing Powell-Bowman interline service.
5. (130) Mobile Container Company, Cincinnati, Ohio. Container cement, chemicals, zinc oxide, paste, and tin plate	Inbound to shipper's plants at Springdale and Blytheville, Ark. from Birmingham, Ala. and Atlanta, Ga. Shipper receives, at its Springdale plant from Atlanta about 250,000 pounds of TL shipments and between 2,000 and 4,000 pounds of LTL shipments twice a month. The Blytheville volume is less than this.	Gordons and Jones.	Shipper wants a direct single-line service. It expresses a need for the proposed second-day service from Birmingham and Atlanta. Shipments of container cement require protective service at temperatures below 40 degrees Fahrenheit. Shipper's Chicago supplier has opened a new plant at Atlanta and wants to supply shipper from this point. Two shipments from this Atlanta facility were handled by Gordons and Jones in interline service. Shipper was not satisfied with the 5- and 6-day service including weekends.	Jones. Shipper has used Jones' service and describes it as good. This carrier has provided protective service.
6. (132) Bear Brand Hosiery Company, Chicago, Ill. Inbound-synthetic yarn. Outbound-synthetic hosiery.	Inbound from Atlanta, Ga. to shipper's mills at Fayetteville, Bentonville and Siloam Springs, Ark. Shipments are received two or three times a week. Outbound shipments move from Fayetteville and Bentonville two or three times a week to Atlanta and Birmingham, Ala. The shipments weigh between 190 and 500 pounds.	Bowman, Gordons, Campbell, and Jones. Shipper uses Bowman interlining with Jones from Atlanta and Birmingham.	Shipper wants single-line, second-day service between its three Arkansas mills, on the one hand, and, on the other, Atlanta and Birmingham. It does not receive single-line service between these points. Transit time is important because shipper has production schedules to meet. It allows between 5 and 7 days for delivery.	Jones. Shipper indicates that the service involving Bowman interlining with Jones is not satisfactory.
7. (199) Shakespeare Company, Kalamazoo, Mich. Golf and fishing equipment.	From Fayetteville, Ark. through the Atlanta, Ga. and Birmingham, Ala. gateways shipper has movements to 33 points in Alabama, 36 points in Georgia, 110 in Florida, 25 points in South Carolina, and 50 points in North Carolina. It has daily LTL shipments of 500 to 2,000 pounds moving from Fayetteville, Ark. to or through Birmingham and Atlanta. Eighty percent of this traffic is handled by two or more carriers.	Jones handles shipper's traffic on an interline basis with unspecified carriers	Shipper wants direct, single-line service to Birmingham and Atlanta. It allows 6 days for delivery with the existing service. Jones proposal of second-day service would meet shipper's needs. Shipper has experienced difficulties with tracing.	Jones.

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting app. sector	Application supported and reserva
(1) (1967) Savery Refrigerator, El Dorado, Ark. Witness's traffic consultant for Pine Bluff Co. Processors Mfg. Co., Trees Lbr. Co., Chemical Co., Dixie Lumber Co., Pine Lumber Co., Ward Davis Lumber Co., and Cross Petroleum Co., all of which are located in Texarkana on the El Dorado area (a) Blackard Printing Ink (b) Pyrocolite Light Fixtures (c) Great Coffee Chemicals (d) Dixie Lumber pallets (e) Ward Davis pallets (f) Cross Petroleum petroleum and petroleum prod	(a) From El Dorado to specified points in Georgia, Missouri, Tennessee, Alabama and Florida; weekly, with average from 20 to 30 pounds (b) From El Dorado to specified points in Alabama, Arkansas, Connecticut, Florida, Louisiana, Indiana, and Iowa. Shipper's exhibit for period May 15, through October 7, 1966 indicates total volume of 31,957 pounds, the preponderance of which moved to Missouri and Kansas (c) From El Dorado to points in Alabama, Georgia, and the Carolinas, twice weekly with shipments ranging from 1,000 to 15,000 pounds. (d) 5,000 pounds weekly to Chicago, 2-3 100,000 pounds weekly to St. Louis, Mo., 50,000 pounds weekly to Oklahoma City, Okla., 40,000 pounds weekly to Tulsa, and 25,000 pounds weekly to Springfield, Mo. (d) From El Dorado to Atlanta, Ga., three times monthly, and to specified points in Missouri, Illinois, Oklahoma and Florida, twice monthly. Average shipment weighs between 20,000 and 30,000 pounds (e) From Texarkana, Ark., to Kansas City, Mo., and points in Iowa, twice monthly at 20,000 to 30,000 pounds a shipment (f) From Smackover, Ark., 60,000 to 80,000 pounds monthly to Georgia; 200,000 pounds monthly to Florida, "CL quantities" twice monthly to the Carolinas, 40,000 pounds monthly each to Chicago, Ill., Kansas City and St. Louis, Mo.; 30,000 pounds monthly to specified points in Missouri and Alabama	Red Ball, Atlas, Mer Arkansas-Best	Currently has three line service. Lines and [illegible] and complains of high transit times, damage in handling, and tracing difficulties. Desires direct service to Atlanta and Birmingham. Wants 1-day service. The six Arkansas companies heartily wish to eliminate joint-line service as much as possible to avoid delays in transit	Jones, Bowman and Strickland
(2) (1964) Rockwell Manufacturing Company Russellville, Ark. Metering meters	From Russellville, shipper has LTL movements to Birmingham, Ala. and Atlanta, Ga. Also to points in North Carolina, South Carolina, Alabama, Florida, and Georgia	Brown, Ryder, Georgia Highway (delivering carriers) Mercury, Jones, Red Ball, Carter Truck Line, and Henry Truck Line (originating carriers)	Consistency of transit times is important to meet installation schedules. Accordingly, shipper desires to eliminate three-line hauls and limit two-line hauls. Wants second-day service to Atlanta and Birmingham. Shipments to Florida currently move through Memphis gateway, but shipper would utilize Atlanta more often if it could rely on consistent two-day service to Atlanta.	Jones
(3) (1965) (a) Carpets, Inc., Little Rock, Ark. Carpets padding and drapes (b) J. F. Jones Construction Company Little Rock, Ark. Construction supplies	(a) From Birmingham, Ala., and Atlanta, Ga., and points in Massachusetts, Tennessee and Pennsylvania to Little Rock, Ark. Shipper receives construction materials and supplies four times a year with each load weighing between 300 and 600 pounds. (b) From points in Pennsylvania, Georgia, Tennessee, and New York, N.Y., Dallas, Tex., Lawrence, Mass., and Anderson, S.C., to Little Rock. From 8/11/65 to 5/9/66, shipper received 42 shipments averaging 1,000 pounds each.	Universal, Powell, NFL, Robinson, Ryder, Viking, Ga. Hwy., CTWC, Northern, T.I.M.E., Baggett, Bowman, Wilson, J. C. P. Gordon, T.I.M.E., CTWC, Atlas, Campbell, Burks.	Wants single-line service for less delays. Transit is from Pennsylvania are from 4 to 14 days, from Georgia 3 to 10 days, from Massachusetts 13 days, and from Tennessee 2 to 7 days, all including weekends. Wants Bowmans' service on traffic from Georgia, Tennessee, and Pennsylvania	Jones and Bowman. Jones proposal would not give shipper a single-line service
(4) (1965) Acme Linoleum and Co., Inc., Little Rock, Ark. Rugs, carpets fabrics, and tile	From points in Pennsylvania, Georgia, North Carolina, South Carolina, Florida, New Jersey, and New York to Little Rock from 12/1/65 to 9/1/66 shipper transported 51 shipments. Their average weight was 1,[illegible] pounds	Acme, Georgia Highway Consolidated, CTWC, PNE, Wilson, CTWC, Atlas, Gordons, Mercury, Superior, T.I.M.E., SWT, Bowman, Ryder, Roadway, Terminal, Murdock	Wants faster more consistent time-in-transit. Average transit time is 5 to 14 days, including weekends. Needs 2-day service from points in Alabama, Georgia, and Tennessee and the Carolinas. 1-day service from New York and Pennsylvania points. Wants proposed next-day service from Atlanta.	Jones and Bowman
(5) (1965) Tri State Motor Supply Co., Cresswell, Ark. Pump parts, woodwork equipment, and industrial supplies	From Atlanta, Ga., Birmingham, Ala., Dallas, Houston, San Antonio, and Fort Worth, Tex., and Greenville, Miss., to Cresswell. Shipper receives between 40 and 60 shipments a month with the shipments averaging between 300 and 500 pounds	Watson, ABF, Eastern, Spector, PIE, Red Ball, Red Line	Wants faster service. Prefers single-line service. Roadway selected freight bills show average transit time of between 4 and 6 days. Only a few transit times given. Needs 2-day service from Atlanta and from Birmingham 1-day service	Strickland, Jones, and Bowman. Shipper has not tried the services of several existing carriers. Shipper states it is getting good service from Dallas



Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Intervening services	Transit & supporting facilities	Application, objections and remarks
32. (647) Georgia Pacific Corp., Crossett, Ark., lumber, paper and paperboard products	From Crossett, to points in Alabama, Georgia, Florida, [illegible] Carolina, and Tennessee. Shipments range between 10,000 and 44,000 pounds	Net Backhaul Arkansas Best, Red Ball, Jones Truck, Mercer Motor Express, Texas Eastern Transportation, Texas, Inc., and Transcontinental Freight System	Shipper wants to eliminate [illegible] per rate. Arkansas Best has terminal serving Crossett, Arkansas, and fourth-morning service to northern Florida and fourth-morning service to southern Florida	Bowman and [illegible]
33. (643) Cotton Transportation Equipment Co., Inc., Memphis, Tenn., Arkansas, Alabama, Georgia, Equipment	From Harvard Tree to points in Alabama and Georgia. Approximately 187,000 pounds moves annually	Pyburn Trucking Lines, Jordan Motor Transport, Alabama Highway Express, Inc., Dixie Line, Inc.	Shipper states that Alabama Highway and Pyburn have refused its freight. Dixie has noted a complaint. Pyburn has no authority against Ryder	Jones
34. (642) Sears Roebuck and Co., Memphis, Ark., clothing	From Memphis, to Chicago, [illegible], Atlanta, Ga., Birmingham, Ala., Kansas City, Mo., and Dallas, Tex., and return. Shipments range between 50 and 300,000 pounds	Southwestern, Red Ball, East Texas, Jones, Dixie, and ABF, and Bell, Floyd & Beasley, Gordons, ETSWMC, Dixie, and Pendleton	Ryder one service made quite many second or third day serv. e to and from Chicago, and second-day service to and from Atlanta and Birmingham	Jones
35. (642) Home Supply Company Hamburg, Ark., furniture, and carpets, stoves	From Atlanta and Dalton, Ga., Roanoke, Virginia, and Dallas, Houston, and Waco, Tex., to Hamburg. Between 10 and 21 shipments monthly, ranging between 100 and 400 pounds	Red Line, Arkansas-Best, and Pleasure. Facility required	Arkansas Best service wants second-morning service	Strickland
36. (676) Sous Lighting, Inc., El Dorado, Ark., Lighting fixtures	From El Dorado to Atlanta, Ga., Birmingham, Ala., Dallas, Tex., Baltimore, Md., Tulsa, and Oklahoma City, Okla., St. Louis, and Kansas City, Mo., and points in New York. Weekly shipments range between 100 pounds and 500 pounds	A.B.F., Arkansas-Best, Transcontinental, Mercer	Wants faster transit service. Presently allowing 10 days real time to Oklahoma City, 4 days to Kansas City, between 5 and 7 days to Atlanta and Birmingham, 7 days to New York, and third-morning to Dallas	Bowman. Shipper states that because of weather conditions in the E.D. [illegible] the use of A.B.F. to Kansas City between 5 and 7 days service
37. (679) Greater El Dorado Commerce, El Dorado, Ark.	From and to El Dorado.	Red Ball, Mercer, Arkansas Best, Allen	Interested in additional transportation services	Jones. Interstate Atlas, and Arkansas Best, serves El Dorado. Trucking service to many points
38. (681) Daisy Manufacturing Co. Rogers, Ark., Air rifles, B B shot and toy guns	From Rogers to Atlanta, Ga., and Birmingham, Ala. About 1 million pounds and [illegible],000 pounds moves respectively. [illegible] point	Campbell, Jones, Ryder, Red Ball, Central.	North Center service	Jones. Shipper is dissatisfied with Campbell's trucking service to Birmingham because transit time. Other truck-line service [illegible]
39. (685) Wilmer Ivory Handle Co., Hope, Ark., Wooden handles	From Hope to points in Alabama, Florida, Mississippi, North Carolina, and South Carolina. About 400,000 pounds moves annually	Strickland and [illegible] ing with other unnamed connecting carriers	Truck-line service inadequate. Wants better and 2 days service. Presently allows between 9 and 10 days real time	Strickland
40. (686) a. Prince Poultry, Inc., (b) Prince Manufacturing Co., [illegible] Hatchery & Feed Mills, Inc., (d) Lincoln Egg, Inc., e. [illegible] Prince Co., all of Lincoln, Ark. Stores, Chassis, Poultry Buildings and equipment, produce, eggs and feed	From Birmingham, Ala., and Columbus, Ga., to Lincoln. Annually, approx. 2.3 million and 2,713 pounds moves From respective cities	Dixie, Ryder, and Alabama Georgia	Truck-line service inadequate. Wants 1-day service. Must have allow. 10 days to 2 weeks real time	Jones
41. (710) American Greeting Corp., Osceola, Ark., Greeting cards and related items	From Osceola, Ark., to points in Alabama, Georgia, Florida, North Carolina, and South Carolina. About 11 million pounds moves annually in TL and LTL shipments	Gordons, Campbell, ETSWMC, Superior, Arkansas Best, P.A.T.	Wants truck-line service to destination States	Jones. Shipper states that Ryder car service is inadequate but its carrier is not interested in the traffic. Traffic seasons, needs expedited delivery
42. (711) Grayette	See shipper under Missouri heading			

114 M.C.C.

Summary of evidence of supporting shippers—continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
51 (7?8) Kearney Co. Fayetteville, Ark. Electrical switches, fuses and pole line equipment.	From Fayetteville to Atlanta, Ga., Greenville, Miss. and Birmingham, Ala. Ships 3,000 to 4,000 pounds every 2 weeks to Atlanta (LTL) and 500 to 1,000 pounds two times a week to Birmingham. (LTL) Has occasional shipments to Greenville.	Jones, Red Ball, Campbell.	Too many delays with present service. Wants second-morning service to Atlanta and Birmingham.	Red Ball, Jones. Shipper has no complaints with present service to Greenville (single-line) Campbell offers single-line service to Birmingham.
52 (?84) Democrate Printing and Lithographing Company, Little Rock, Ark. Catalogues, magazines and books	From Little Rock to points in North Carolina, Florida, Georgia, Alabama, South Carolina, and Virginia. Ships about 5,000 to 10,000 pounds a month to the above areas. Weight may range up to 12,000 pounds.	ABF, Campbell, Jordana, I.T.M.T. Hall, Ryder, Thurston, Jones, Tamiami, ITSMC, Huckabee, Bowman, White, R. C. Masters, Overnight, and Central.	Wants faster transit time. Wants second-third-morning service to Florida, and 1- or 2-day service to Alabama and Georgia, and 2- or 3-day service to Virginia and North Carolina.	Bowman, Jones. Jones interlining at Memphis with Bowman, can serve the Carolinas and Alabama.
53 (?91) Tabler Corporation, Hope, Ark. Protective coatings for plastic.	From Hope to the Atlanta, Ga. gateway. Ships 2 or 3 times a week about 1,?96 pounds a shipment.	Hideway-Little Rock-ITSMC, T. I. H. I. Strickland, Memphis, Transcon.	Allows 7 to 10 days load time expects 2-day service to Atlanta with Strickland.	Strickland. If application were granted, would still be a 2-line haul. Likes Strickland's service.
54 (??4) Hubbard plastic products, Fort Smith, Ark. Molded chairs and desks.	From Fort Smith to Birmingham, Ala. Ships 70,000 and 90,000 pounds a week to Birmingham.	Gordons, Jones, Cole	Wants the convenience of a single-line service. Has complaints with Cole's service. Wants faster deliveries. Wants second-morning service to Birmingham.	Jones. Shipper dissatisfied with Jones interchanging with Cole, but there are 3 other carriers Jones can interchange with that have been untried
55. (??6) Ralph Jones Company, Inc. Siloam Springs, Ark. Plastic pipe and fittings.	From Siloam Springs to points in Alabama and Georgia. Shipped 75,000 to 100,000 pounds to above areas in 1966. Expects to ship 300,000 pounds in 1967. The traffic is LTL. Average weigh of each shipment is between 2,500 and 3,000 pounds.	Ruble, Gordons, Jones, Campbell, Ark-Best.	Wants faster transit time and single-line service. Wants 2-day service to Atlanta and Birmingham.	Jones
56. (??8) Sterling Stores Co., Inc. and Cook Wholesale Co., Inc. Little Rock, Ark. General merchandise	From points in New Jersey, North Carolina, South Carolina, Georgia, and Tennessee to Little Rock.	Mooleytown interlining with T.I.M.I., Thurston-POH, Atlas, G.M.E., Campbell, ITSMC, Old Dominion, Mains, Federal, Dials, Gregory, Broadway, Overnite, MFL, Ryder, Transcon, Caterba.	Wants faster transit time. Wants single-line service to avoid tracing problems. Average transit time about 6 days including weekends. Wants proposed 3-day service.	Bowman. Uses private carriage Jones' service from Memphis is good.
57 (??9) Norton Stores Incorporated, Ark. General merchandise	From the Atlanta, Ga. and Birmingham, Ala gateways to shippers stores located at Russellville, Springfield, Siloam Springs, and Rogers, Ark. All shipments are LTL averaging about 700 pounds.	Jones, ABF, Campbell, Red Ball, Overnite, T.I.M.I Co. M'way, Caton, MEA, Thurston, Ryder, TCY, PNL, Gordons, Burdsch, Harper, Barnes, Cope, Thurston, Huckabee, Ramis, Transcon, Pike, ITSMC, BC, Wanbers, Mains, Ruble, Standard, Haggett, West, B C V, AAA Highway.	Wants less in-transit. Average transit time about 5 days.	Jones. Shipper has not reviewed the service of many of its origin carriers.
58 (?81) Flex Truck Line, Fort Smith, Ark. Commercial freight	From Fort Smith to Atlanta, Ga. and Birmingham, Ala (and beyond). Between 500 and 1,000 pounds handled to above points and beyond each day.	Gordons, Campbell, Mercury, ABF, Jones,	Wants to interline directly with Jones. Presently getting interchange second-day service. Wants consistent 2-day service to Atlanta and Birmingham.	Jones.
59 (??0) Standard Register Company, Fayetteville, Ark. Printed forms and paper.	From Fayetteville to points in Florida. Shipped 81,?58 pounds to Florida during 1966.	Jones, Campbell, Ryder, and Transcon Hall, Central, Tamiami, Red Ball, Terminal.	Jones would give shipper 2-day service to Atlanta gateway. Wants single-line service to Atlanta. Average transit time 7.2 days including weekends. Allowing 4 days load time to Atlanta	Jones. Shipper has a wide choice of existing services through many gateways.
60. (??7) Allen Canning Company. Siloam Springs, Ark. Canned foods	From Siloam Springs to Atlanta, Ga. and Birmingham, Ala. Expected to ship 1,?00,000 pounds of food to above points in 1967. Shipped 2,600,000 pounds in 1966.	Colonial.	Colonial does not have enough equipment to meet demands. Shipper requires refrigerated service.	Jones. Colonial offers direct service. Shipper waited as long as 2 weeks to get equipment from Colonial. Shipper needs about 10 trailers a week
61. (??8) Webb Wheel, Siloam Springs, Ark. Inboard-trunk trailer axles. Outboard-wheels, brake drums, trunk and trailer axle assemblies.	From Montgomery, Ala. to Siloam Springs, shipper receives three shipments a year each weighing from 27,000 to 30,000 pounds. From Siloam Springs to points in Alabama, Georgia and Florida. Ships in excess of 750,000 pounds a month.	Campbell, Jones, Transcon, ABF, Bowman, Ryder, Caton, A.A.A. Ruble and Ark-Best	Wants a more direct and a faster service. Wants second-morning service to Atlanta.	Jones. Campbell's route is very circuitous.

HERRIN TRANSP. CO. EXTENSION—ATLANTA, GA.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
62 (799) Southern Glider & Indus Company, El Dorado, Ark. Folds, folders and indexes	From El Dorado to Greenville, Miss. Atlanta, Ga., and Birmingham, Ala. Ships once a week to Greenville, 1,000 pounds; several shipments a month to Atlanta, minimum to 4,000 pounds and ships twice a month to Birmingham (minimum to 3,000 pounds)	Red Ball, Herrin	Using a one service would avoid transfer problems. Wants overnight service to Greenville and second day service to Atlanta and Birmingham	Red Ball
63 (800) Riverside Furniture Corporation and Twin Rivers Furniture Corporation, both of Fort Smith, Ark. Furniture	From Fort Smith to Birmingham, Ala., and Atlanta, Ga., TL lots and LTL. Ships between 70,000 and 100,000 pounds a month to above points	[illegible] and Red Ball	Desires faster deliveries. Wants a one-morning service to Atlanta and Birmingham	Jones. Jordana appears to have discontinued offering single line service to this shipper. Rivers side is affiliated with Ark-Best freight. Has joint-line service and shipper has no specific complaints.
[illegible] Furniture Co., Fort Smith, Ark. Furniture	From Atlanta, Ga. and Birmingham, Ala. to Fort Smith 14,000 pounds a month	Gordon, Mercury, Campbell, Bowman, Nemalls, ETSY, National and T.I.M.E.	Average transit time from Birmingham is 4-5 days including weekends.	Jones. Jordana offers single-line service. Campbell offers single-line service from Birmingham
[illegible] Arkansas Auto & Industrial Supply Co., Fort Smith, Ark. Automotive and industrial supplies	From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives about 100 LTL shipments from Atlanta a year	Jones, ABF, Campbell, Bee Line, Ryder, Mathews, T.I.M.E., Interstate, ETSY, Thurston, Roadway, Northern, Transcon, Nemalls, Gordons, Mercury	Needs fast delivery service as it can't stock for the goods. Declines wants second morning delivery from Atlanta and Birmingham. Average transit time is 4 to 5 days	Jones. Proposed service would still be joint line service. Jordana offers single-line service from Birmingham
64 (801) Harris Company Inc Springdale, Ark. Piece goods rugs, towels, clothing	From Atlanta, Ga. and Birmingham, Ala. gateways to points in Arkansas. Receives approximately 300 LTL shipments a year	Jones, ABF, Bee Line, Roadway, Campbell, Mercury, Waldron, Mass., Hoover, Bowman, ETSYMK, STD, Carolina, T.I.M.E., TCI, Thurston, Gordons, Stasi, GRI, Smith, Overnite, SFW, and Nicholas T.I.M.E., Jones, Roadway, Thurston	Needs faster delivery so it can have close-out sales at the end of the season. Transit study only represents a small portion of the traffic. Current transit times range from 3 to 9 days	Jones
65 (811) Whillock Manufacturing Company, Inc Springdale, Ark. Cotton [illegible] goods	From Atlanta, Ga. to Springdale. Receives 5 LTL shipments from Atlanta about twice a month	Holt, ETSYMK, Strickland, T.I.M.E. Gordons, Bee Bell, ABF, Control, AA, GMC, MCM, Nicholas, Transcon, Interstate, Nelms, Bennett, Tramcon, Fuller, Brown, Thurston, Tamiami, T., Pyle Mercury and Atlas	Wants single-line service from Atlanta. Shipper not satisfied with a morning day service. Wants 2 day service. Average transit time from the Carolinas is 4 days	Jones. Gateway on most shipments. No loss to Memphis. Granting of the application would permit Jones to gateway at Atlanta instead of Memphis. Ryder, Jones service described as comparable
66 (813) Retail Stamping Corporation, Conway, Ark. Vending machines	From Conway to points in Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee, Virginia, Maryland, and New Jersey. Ships between 40,000-50,000 pounds LTL to above points a month, weighing between 360 and 8,000 pounds. The average shipment weighs 1,000 pounds	Jones, Bowman, Ryder, Thurston, Gordons, ETSYMK, and Campbell	Wants second-day delivery to Birmingham and Atlanta	Jones. Service to Carolinas is presently a two-line haul. If application were approved it would still be a two-line haul.
67 (815) Van Buren, Ark. 68 (818) Eckhart products Corp Fayetteville, Ark. Copper sulfate, metal fittings, parts, and pipe connections. 69 (820) Jones Brothers, Fayetteville, Ark. Furniture, appliances and general merchandise.	See shipper under Oklahoma heading From Fayetteville to Atlanta, Ga., Charlotte, N.C., and Tampa and Fort Lauderdale, Fla. Ships LTL 100,000 pounds a year to Atlanta, 30,000 pounds to Charlotte, 50,000 pounds to Tampa and Fort Lauderdale, and 200,000 pounds a year to points on the east coast. From Atlanta, Ga. and Birmingham, Ala. gateways to Fayetteville. Receives about 8,000 pounds a year in LTL lots	Jones, Bowman, Ryder, Thurston, Gordons, ETSYMK, and Campbell	Wants second-day delivery to Birmingham and Atlanta	Jones. Jones over Memphis can currently offer the proposed two-line service
71 (827) Fayetteville, Ark. 72 (828) Magnolia, Ark. 73 (833) The Murray Company, Camden, Ark.	See shipper under Oklahoma heading See shipper under Oklahoma heading From Camden to New York, N.Y. During 1960, shipper transported 119,450 pounds to New York. Average shipments weighs 2,500 to 3,000 pounds	Thurston, ETSYMK, Tolliver, McPac, Gulf, ABF-RCA, Gordons, Georgia Highway, Campbell, James Standard, R.C. Ala, Ry Express, T.I.M.E. Stasi, Transcon, Nelms	Wants a single-line service from Atlanta and Birmingham. Average transit time from the Carolinas can run 4 days including weekends. Needs 2 days and 3 days to Georgia. Wants second-morning service from Atlanta and Birmingham to Fayetteville	Jones. Witness states that he is satisfied with existing service but would prefer a single-line service
		Atlas, Southeastern, and Powell	Wants a faster delivery service. Allows end time of 4 to 5 days from Camden to New York	Bowman. Witness states that he is satisfied with existing service but would prefer a single-line service

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
75 (83-): Rogers Hardware & Lumber Company, Nicanor, Arkansas and garage doors.	From Atlanta, Ga. to Nicanor, and from Wilmington, Fla. to Nicanor. Receives about eight LTL shipments a month from the above points.	ETMC, Jones, Ryder, and Campbell.	Lack of competitive service; 5 days required for transit. Wants 2-day service from Atlanta. Transit time was stated to be between 3 and 4 days from Atlanta to Little Rock where shipments are intercepted for delivery to Nicanor.	Jones. Witness admitted present service was adequate.
76 (-9x0; Fort Smith Seed & Door Inc. American Home Dealers Supply Corp., both of Fort Smith, Ark. Nailings and screens.	From Clifton, Ga. to Fort Smith (5,000 pounds every 4 to 6 weeks). From Conyers, Ga. to Fort Smith (one shipment every 4 to 6 weeks ranging 1,000 pounds). Shipper states it would receive 1,000 pounds every 2 weeks from Miami, Fla., but because of slow delivery service it is currently using other sources.	Georgia Highway, Gordons, Jones, Carolina, T.I.M.E., Mercury, Transcon, and Campbell.	Average transit time is 5 days including weekends. Wants second-day service from Atlanta, Birmingham to Fort Smith.	Jones. Jones proposes to serve to and from Atlanta and thus shipper would still have to rely on a joint-line service.
77. (8-3) General Business Forms Inc. Bentonville, Ark. Business forms.	From Bentonville to Atlanta, Ga. and Birmingham, Ala. Shipments are LTL weighing an average of 160 pounds.	Jones, ABF, Campbell, Red Ball, Ryder, Bowman, AOV	Wants a single-line service. Transit time from 2 to 3 days (including weekend). Allows 1 to 3 days lead time. Wants second day service to Atlanta and Birmingham.	Jones. Shipper routes about 75 percent of its outbound traffic. Campbell offers direct service to Birmingham and Mobile. Transit time appears to be reasonable. Jones. Shipper has not used the services of several joint-line carriers over the Birmingham gateway.
78 (8xx) Citation Mfg Co., Inc., Siloam Springs, Ark. Car washing equipment.	From Siloam Springs to Birmingham, Ala. and Atlanta, Ga (as gateways). From 8/25/66 to 12/30/66, shipper transported 9 shipments to points in Florida, Alabama and Georgia with an average weight of about 400 pounds. Shipper moves 3 to 4 shipments a month weighing about 800 to 900 pounds to Birmingham. To Florida, shipper moves about 5 or 6 shipments weighing between 100 and 4,000 pounds.	Campbell, Ryder, Hall, Gordons, Bowman, Volpe & Boshkin	Wants single-line service to Atlanta and Birmingham. Wants specific services. Wants second morning delivery to Atlanta and Birmingham.	
79. (8x7) Texo Office Supply and Furniture Co and Texo Printing Company, Fort Smith, Ark. Office supplies.	From Marietta, Ga., Birmingham, Ala., and points in North and South Carolina to Fort Smith. Receives 6 to 8 shipments a year from Marietta with each weighing 250 to 300 pounds; receives 6 to 8 shipments a year from Birmingham with each weighing between 300 and 500 pounds; and receives 7 shipments a month from the Carolinas with each weighing 400 to 600 pounds.	Lancaster, JBL, Ryder, Mercury, ETMC, Campbell, and Overnite.	Wants faster single line service. Average transit time 4 days excluding weekends. Wants 2-day service from Atlanta and Birmingham and 1-day service from Spartanburg, S.C. to Atlanta.	Jones. Five or six motor carriers operate between Memphis and Fort Smith. Shipper has never used the Memphis gateway. Consolidated Freightways offers single-line service.
80. (8x8) Rumble Upholstery Supply, Inc., Little Rock, Ark. Material.	From Atlanta, Ga. and Birmingham, Ala. as gateways to Little Rock. Receives LTL shipments from points in the East through Atlanta. Each shipment weighs about 150 pounds.	Freight Forwarders, Roadway, Thurston, Ryder, Atlas, ETAMEC, Mercury, Superior, Garrison, Eastern, TCT, T.I.M.E., Campbell, Smith, Overnight, ETMF, Strickland, Consolidated, Cole, Transcon, Wilson, Georgia Highway, Red Ball, Dixie, Southwestern, Bowman, Midland, Long.	Wants faster single-line service from Atlanta and Birmingham. Jones promises overnight delivery. Shipper introduced a transit time study which indicates generally that the transit times shown are not satisfactory.	Bowman and Jones Strickland offers single line service from New York and New Jersey. Mercury seems to be giving fairly consistent overnight service from Memphis. Roadway 2-4 days from the Carolinas.
81. (811) Baldwin, Williams, & Lisk, Fort Smith, Ark. Printed items.	From Fort Smith to points in Georgia (1,500 to 2,250 pounds twice a week), Alabama (750 to 1,500 pounds a week), Florida (1,000 to 2,000 pounds a week), and to North and South Carolina (1,000 pounds a week). Supporting Jones to Atlanta and Birmingham gateways.	Mercury-interlining with other carriers	Wants second-morning service from Ft. Smith to Atlanta and Birmingham.	Jones. Shipper has no specific complaints with existing service.
82. (886) Hart Band Company, Sheridan, Ark. Stainless steel containers.	From Sheridan to Atlanta, Ga., Columbia, S.C. Riverton, N.C., Birmingham, Ala. and Greenville, Chattanooga and Nashville, Tenn. It made 47 shipments to the above points during 1966. Ranging from 200 to 1,200 pounds (LTL). Also from Sheridan to Montgomery & Mobile, Ala., Jacksonville, Winterhaven, and Pensacola, Fla., and Brunswick and Augusta, Ga., shipper made 61 shipments collectively in 1966, ranging from 200 to 8,000 pounds (LTL).	Sheridan interchanging at Little Rock with ETMF, ETAMEC, Gordons, Campbell, T.I.M.E., Cole, Delta, Harper, Daggett, Central, and Buchanan.	Wants a fast reliable, single-line service from Little Rock. Wants a non-line haul service available.	Bowman. Shipper has numerous joint-line services available and has no specific complaints about them.
83. (889) Rockwell Manufacturing Company, Pittsburg, Pa. Parking meters and valves.	From shipper's plants at Russellville, Ark and Sulphur Springs, Tex. to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Only volume figures given are from Sulphur Springs (about 150,000 pounds a month), to the Southeast. Ships to Atlanta from Sulphur Springs three to four times a week (LTL).	ABF, Transcon, Overnite, SWT, Mercury, ETMF, Ryder, ETAMEC.	Wants a single-line service.	Red Ball. Shipper states that Red Ball's service would be more convenient. Jones can perform some single-line service. Shipper has several two-line haul carriers available. There are no specific complaints about transit time. Bowman.
84. (893) Power Truck Line, Inc., Searcy, Ark. Common carrier. Holt Truck Line, Inc., Conway, Ark. Common carrier.	No specific given but involves transporting general commodities to points in Arkansas, and Memphis, Tenn.	Red Ball, ABF, Central, Transcontinental, Campbell, ETMF, Gordons, T.I.M.E., Ryder.	Wants to interline with applicant.	

Summary of evidence of supporting shippers—Continued

COLORADO

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applicant supported and remarks
1. (390) Leadmaster Corporation, Denver, Colo. Luggage.	From Denver to Atlanta, Ga. (3 million pounds a year) From shipper's Atlanta warehouse to points in [illegible] and Mississippi. (450,000 pounds a year) Each shipment weighs about 25 pounds from Birmingham, Ala., to Atlanta it ships 10,000 pounds a year.	Yellow, Colo., Ryder, Georgia Mov., have ... Highway	Wants faster and consistent single-line service. Allows days for delivery.	Rail Ba... several existing carriers offer single-line service from Atlanta to points in the destination States
2. (438) Gardner Denver Co., Denver, Colo. Mining and construction equipment	From Denver to Atlanta, Ga., and Birmingham, Ala., and return. Outbound about 64,000 pounds monthly and inbound about 9 shipments monthly weighing 170 pounds each	Watson Wilson, P... Jersey, P.I.E., ATA, Red Ball	Prefers direct single-line service. Shipper states that average transit time is 6 days, and that transit times now range between 5 days and 14 days	Rail Ba... Watson-Wilson offers single-line service from Denver to Atlanta. No specific complaints
3. (682) Electron Corporation, Littleton, Colo. Iron and steel shafting, pulleys and sheaves	From Littleton to Atlanta, Ga., and Birmingham, Ala. About 60,000 pounds and ...37 pounds shipped to respective cities yearly.	Red Ba..., Watson Wilson, Jersey ... Trucking ... Lines,	wants faster service. Prefers single-line service	Red Ba...
4. (683) Gates Rubber Co., Denver, Colo. Rubber products	From Denver, Natchez, Miss., and ... Tex., to Atlanta, Ga., and Birmingham, Ala., and from Atlanta to Birmingham. Between ...,000 pounds and ... million pounds moves yearly. TL and LTL	Rumer, Mercury, Arkansas Best, TM, I.M.F.S., P.I.E., Garner, Pinggaby, Dix, Gordons, Terminal, Ryder, Atlanta Ptr., Cole, ... Pearlee, ... Transportation, Ryder, Watson Wilson	Inconsistency of existing service wants ... or ... 5 days service. Average transit time now is 6 days including weekends.	Red Ba... no ... Watson Wilson ... service to Atlanta. Transit study time does not include all shipments during period covered
5. (720) Aapex Corporation, Colorado Springs, Colo. Tape recorders and parts thereof.	From Colorado Springs to ... Ala. (Sept. 1966 ... shipments, total weight 13,352 pounds) and Atlanta, Ga. (Sept. 1966 5 shipments total weight 1,202 pounds)		wants faster, single-line service. Less chance of damage to its product if it had single-line service. Wants to ... Birmingham service to Birmingham and Atlanta.	Red Ba... No evidence of poor existing service
6. (702) Jane Parr's Company, Pueblo, Colo. Internal combustion engine parts	From Colorado Springs, ... to Atlanta, Ga. 99,0... pounds a year and Birmingham, Ala. ...,75... pounds a year)	RB Interstate, Watkins, Yellow Trans., R.I.A., Navajo, and Denver-Chicago	Present ... service ...	Red Ba... No evidence of poor service show

CONNECTICUT

1. (76) Jewett City	See shipper under Massachusetts heading			
2. (472) American Cyanamide Company, Inc., Wayne, N.J. Chemicals, dye intermediates, consumer toiletries, plastic molding compounds, synthetic resins, veterinary biologicals, drugs and medicines	From Waterbury, Wallingford, and Bridgeport, Conn., Bound Brook and Princeton, N.J., Springfield, Mass., and Pearl River, N.Y. shipments move to shipper's warehouse at Dallas, Tex. Protective service is required on one half of the movements from Princeton and on 5 percent of the movements from Pearl River. About 1.7 million pounds a year moves from Bound Brook to Dallas. 3.6 million pounds from Springfield, 1 million pounds from Wallingford, 225,000 pounds from Princeton, and ...5 ... pounds from Pearl River. Most of this traffic moves on ... cuts, but shipper has a consistent, though less frequent, need for LTL service. Shipper expects a 13 percent ... its business through ...	Shipper uses the services of motor common carriers, freight forwarders, rails and seatrain lines and sea and service for the movements of products outbound from eastern points ... Dallas. Strickland and Roadway have been used in service	Shipper requires split pickup service at Princeton and Pearl River on traffic to Dallas. It would like to plan its inventory ... in a ... six service on TL movements from New England, New York, and New Jersey and Dallas. However, ... Ryder, Atlas says for delivery to Texas. Transit time is ... service backs ... raise disruptions in the ... forecasting cycle. If the applications are granted shipper will terminate much of its use of transportation ... carrier. Shipper indicates that ... and does not offer consistent service and that Roadway does not render satisfactory transit times. On one TL movement handled by Roadway the transit time was ... days ... during a Saturday, Sunday, and Monday	Bowman and Johnson. Shipper indicated that it understood that Johnson has refrigerated equipment and that if it is granted the authority sought Bowman will reimburse refrigerated service ... does not appear ... service and teaches that ... satisfactory. Johnson ... refrigerated service ... Bowman ... It can serve all of the origin points while Bowman cannot serve ... gford, Waterbury, Bridgeport, and Springfield. Sealand has been used on all the traffic requiring temperature ... from Princeton ... ver, River to the ... Shipper has ... Atlas ... temperature controlled ... the service be ... the East and ... and on the one hand, and ... other Bowman and ... it as ... factory ...
3. (892) Dunham Bush, Inc., West Hartford, Conn. Air conditioning and refrigeration equipment	From West Hartford to points in Texas, Louisiana and Mississippi. Shipper moves about 20,000 pounds monthly of LTL ... shipments to Baton Rouge, Monroe, and Shreveport, La. and Jackson, Miss.	Johnson, Roadway, ... port, Centra..., Adams, Seals, Ryder, Dealer, Merchants, ETHAM, Texas & Pa... West, ... Unions, Red Ba..., Akers	Wants faster single-line service ... Miss., ... and ... area	
4. (938) Rockville, Conn.	See shipper under Massachusetts heading			

Summary of evidence of supporting shippers—Continued

DELAWARE

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (525) Rockford, Del.	See shipper under Massachusetts heading.			

FLORIDA

1. (70) Pensacola, Fla.	See shipper under South Carolina heading.			
2. (100) Central Aircraft Corporation, Miami, Fla. Aircraft engines and parts.	Outbound shipments move from Miami to Dallas and Houston, Tex. and through Dallas to points in California. Inbound shipper receives movements from Dallas and Houston and from California as well as from other points. Between 1/1/64 and 6/10/64, shipper had 28 movements to Dallas of which 22 were handled by Bowman and 6 were handled by air lines. It also had two shipments to two California points. One half of the airline traffic would be tendered to Bowman if its application is granted. Shipper receives about three inbound shipments a week by motor carrier and about five inbound shipments a month from Dallas and Houston.	Bowman, Ryder and Central deliver inbound traffic. Bowman originates shipper's outbound traffic.	Shipper wants 3- or 4-day service between Dallas and Miami and 7- or 8-day service between Miami and points in California. Time in transit is important because stock is limited and repairs to airplane engines have to be made as rapidly as possible in order to avoid an excessive loss of revenue. Shipper was not satisfied with Ryder's pick-up service and with transit times on the carrier's inbound interline service. Also, in 1963 Ryder mislaid an engine for about a week.	Bowman. Shipper does not control the routing on inbound shipments. It did not cite any specific instance of unsatisfactory service outbound from Miami to Dallas or to points in California. Shipper has very little traffic moving outbound to Houston. It is interested primarily in service of inbound traffic.
3. (213) Lakeland, Fla.	See shipper under Georgia heading.			
4. (580) W. Bruce, Inc., Pagebar, Inc., Miami, Fla. Metal connectors and cabinets.	From Miami to points in Arkansas, Louisiana, Mississippi, Missouri, Kansas and Texas. About 900,000 pounds every 4 months.	Bowman, Ryder, Central, Terminal.	Difficulty in obtaining pickups, and objects to number of transfers of the freight in transit.	Bowman. Shipper objects to its freight being broken at more than one point.
5. (904) Tandy Leather Co. & American Handicraft., Miami, Fla. Crafts & leather supplies	From Fort Worth, Tex., to Miami. Approximately between 12 and 30 shipments move a month ranging between 200 and 900 pounds	Bowman, Central, Terminal, Tamiami, East Texas, Ryder, Morris, Red Ball, Transcon.	Joint-line service inadequate.	Bowman.
6. (590) Jennie J. Mack, Inc., Miami, Fla. Auto air-conditioners and parts.	From Dallas, Tex., to Miami. About 150,000 pounds moves annually.	Central, Ryder, Transcon, Bowman, Morris, Terminal, Tamiami.	Needs faster service. Wants 5-day service.	Bowman.
7. (845) Sparks Specialty Co., Pensacola, Fla. Tube fittings, valves, tubings, instrumentation equipment and piping accessories.	From Houston, Tex., and Baton Rouge, La., to Pensacola. Shipments range between 15 pounds and 205 pounds.	Mercury, East Texas, Red Ball, WB&R, Central, Georgia, Florida.	Wants faster service. Average days in transit is 7, including weekends. Wants 3-day service.	Bowman, Johnson. Transit time study does not include all shipments.
8. (660) Simulaird & Valentine Co. Cantonment, Fla. Resin compounds, varnishes, and printing inks.	From Cantonment (Pensacola, Fla.) to Camden, Ark., Memphis, Tenn., Monroe, La., Houston, Texas, and Kansas City, Mo., shipments range between 147 pounds and 33,405 pounds.	G.F.A., Gordons, Southwestern, N. Hall, Mercury, Couch, Morris.	Joint-line service inadequate. Wants 3-day service. Presently allowing between 4 and 5 days lead time.	Bowman, Johnson.

114 M.C.C.

Summary of evidence of supporting shippers—Continued

FLORIDA—Continued

Shipper location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
9. (688) Hygeon Coca Cola Bottling Co., Pensacola, Fla. Vending machines and repair parts thereof.	From Kansas City, Mo., to Pensacola. Shipments range between 90 pounds and 4,875 pounds.	Georgia-Florida, Johnson.	Joint-line service inadequate. Wants faster service. Wants 3-day service. Average transit time 6 3 days.	Bowman. Transit time covered 25 percent of traffic for 9-month period in 1966.
10. (754) St. Regis Paper Co., Pensacola, Fla. Paper and paper products.	From Pensacola to Crossett, Ark., Kansas City and Springfield, Mo., Garland, Longview, Port Arthur, and Tamarkana, Tex. and Baton Rouge, La. Ships between 300,000 and 350,000 tons a year, mostly in TL lots. A substantial portion of the above tonnage is transported by rail.	Mercury, Harris, Southwestern, Red Bell, Cooper, Alamo, Johnson and West.	Has had substantial delays with joint-line service and has had damage to its product. Wants single-line service which should save one day in transit. At times needs converts vans and flat-bed equipment.	Bowman, Johnson. Shipper witness acknowledged that joint-line service to several points has been good.
11. (782) Macro-matic, Inc., Miami, Fla. Chemical solution and pumps.	From Miami, Fla., to Kansas City, Mo., Irving, Fort Worth, and Dallas, Tex., and Little Rock, North Little Rock and West Memphis, Ark. Shipped in excess of 2,000 pounds in a 4-month period to the above points. (LTL).	Bowman, T.I.M.E., Transcon, Gordons.	Present service is too slow. Wants Bowman to have single-line service to get faster deliveries. Needs 3- to 4-day service.	Bowman. There are several gateways shipper has not tried in joint-line service.
12. (788) Arnold Cellophane Corporation, Miami, Fla. Printed packaging materials.	From Miami, Fla. to points in Texas. Ships in excess of 45,000 pounds a month (LTL). Each shipment weighs between 1,200 and 4,500 pounds.	Bowman interchanging with Transcon, T.I.M.E., Gordons, ETWF, Ryder.	Present service is too slow. Wants Bowman to have single-line service. Wants 4-day service to Houston.	Bowman.
13. (807) Sheila Shine Inc., Miami, Fla. Stainless steel cleaning compound in cans.	From Miami, Fla., to points in Arkansas, Louisiana, Missouri, Mississippi, Texas, and Kansas City, Kans. Has several distributors and ships to each one about twice monthly. Shipments weigh from a minimum to 3,000 pounds.	Bowman interlining with other unnamed carriers at Atlanta.	Wants faster delivery and less damage.	Bowman. It appears shipper has very few complaints with existing joint-line service.
14. (819) Shelley Mfg. Company, Miami, Fla. Plexiglass lids, leveling dispenses.	From Kansas City, Mo. to Miami. Receives two shipments a month averaging 100 pounds. From Miami to points in Louisiana (2 shipments a week), Mississippi (2 a week), Missouri (2 a week), Kansas (1 a week), and Texas (28 shipments in 1966). Shipments range from 100 to 3,000 pounds, averaging between 500 and 800 pounds.	Ryder, Bowman, Terminal, Gordons.	Laboured - keeps no inventory, therefore, it needs fast reliable service. Present service too slow. Wants 3- or 4-day service from Miami to Houston, Tex., and to Mississippi, and Louisiana points, 4-day service to other Texas points and Missouri.	Bowman. Presently has two-line service to most points with deliveries made in 3 or 4 days.
15. (884) Pensacola, Miami, and Orlando, Fla.	See shipper under Alabama heading.			

114 M.C.C.

Summary of evidence of supporting shippers—Continued

GEORGIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Applications supported and remarks
1. (1) Kind Packaging Company, Atlanta, Ga. Paper products	From Atlanta, in LTL and TL quantities 18 million pounds moves by motor carrier annually to Kansas City and to specified points in Arkansas, Texas, and Louisiana.	Dunahoo, East Texas, and Tennessee direct to Southwest points. Decatur, Alabama-Georgia Express, Motor Freight Harmony, Harvin, East Texas and Red Ball as interline.	Shipper wants direct service so that it can be competitive with other paper producers located in Texas and Louisiana. Existing service is generally described as inadequate because of equipment shortages, backlogs of freight, unbalanced operations, and general indifference.	Harvin, Deaton, Red Ball, Strickland, Bowman, and Jones - from Atlanta to New Orleans shipper has available the single-line services of Deaton, Dixie Highway, Johnson and Roadway. Shipper maintains a private fleet which, on occasion it uses for movements to points in Texas. It supports the Bowman and Jones applications for authority to serve from Atlanta to points in Arkansas, Missouri and Kansas.
2. (2) Tom Houston Peanut Co., Columbus, Ga. Salted peanuts, candies, and bakery goods	From Columbus to Houston, Fort Worth, Dallas, and Beaumont, Tex., and Monroe, La. During first 3 months of 1966 it moved, by motor common carrier, 19 shipments to Houston (24,363 pounds); 1 to Fort Worth (65 pounds); 9 to Dallas (12,691 pounds); 5 to Monroe (5,227 pounds); and 1 to Beaumont (1,830 pounds). Expects to ship to Lafayette, Lake Charles, Ferme, Baton Rouge, Alexandria, Shreveport and Monroe, La.	Jack Cole-Dixie interlining with Harvin, Red Ball or Ryder.	Shipper would like to have transit time improved. The availability of prompt, dependable, and consistent service is important. Shipper indicates that it has frequent complaints with respect to transit times.	Harvin. Shipper handles the majority of its traffic from Columbus to points in Texas in its own equipment. It uses for-hire carriers to serve some Texas points and on a one-time shipments. Georgia Highway and Baggett offer interline service from Columbus to specified Texas points. Also some other specified carriers offer interline service from Columbus to the four named Texas points. Harvin, Ryder's service not tried because this carrier informed shipper that it did not want to make daily pickups on shipper's outbound traffic. Shipper has not inquired about the available single-line service from New Orleans to Atlanta. Deaton and Baggett offer single-line service from New Orleans to Atlanta.
3. (3) Colonial Shoe Co., Atlanta, Ga. Imported shoes	From New Orleans, La. to Atlanta. Shipper receives at least one shipment each week weighing between 500 and 5,000 pounds.	Cole-Dixie direct. Also, Johnson direct, Harvin and Harper interlining.	Shipper is not the receiving second-morning delivery it requires. It refuses to use Johnson because it had a problem with one of this carrier's drivers. Although it receives third-morning service from Harvin interlining with Harper, it would like to have Harvin render single-line service.	Red Ball, Harvin, and Johnson. Shipper is satisfied with the service rendered by Roadway to points in Texas. It feels that the 3- or 4-day service rendered by Johnson from Atlanta to New Orleans is not adequate. But, if this carrier is authorized to handle more of shipper's outbound traffic, shipper believes that it would be able to improve the service.
4. (4) Shirley of Atlanta, Inc., Atlanta, Ga. Ladies and children's clothing	From Atlanta to points in Texas, New Mexico, Colorado, Mississippi, Louisiana, Arkansas, Oklahoma, and Memphis, Tenn. Shipper has daily LTL movements. It ships 25,000 pounds a week with the average shipment weighing approximately 115 pounds to points in the above-described territory, which is served by Red Ball. Shipper expects outbound shipments to double within the next 2 years because of an expansion program in which it is engaged.	T.I.M.E., Johnson, Watson, Cole, Ryder, Roadway, East Texas, and Deaton originate the traffic. Cole-Dixie interlining with Red Ball are used on shipments to Louisiana. Deaton is used to Mississippi points.	Shipper has had difficulty in obtaining pickup service from Ryder. Sometimes it takes 4 days to obtain service from this carrier after a request is made. Although Deaton holds authority to serve all points in Mississippi, it would not pick up a shipment destined to State Line, Miss.	Red Ball. Shipper is only interested in motor carrier service to the two named Mississippi points. While Deaton renders single-line service between Atlanta, Jackson, and Vicksburg, shipper has not utilized this service. Although shipper indicates that the service of Georgia Highway Express is adequate, it had not investigated a service involving Georgia Highway Express from Atlanta to Dublin, Ala. and Red Ball.
5. (5) Schering Corporation, Chamblee, Ga. Pharmaceuticals	From Chamblee (located within the commercial zone of Atlanta, Ga.) to Jackson and Vicksburg, Miss., and Dallas, Tex. Shipper has one or more LTL shipments weekly to Jackson and Vicksburg. One shipment a month moves from or to Dallas. Its average shipment weighs 100 pounds.	From Atlanta to Jackson shipper uses Dixie, Ryder, Georgia Highway, and RFA. Dixie and Ryder are used to Vicksburg. Between Atlanta and Dallas air service used. Ryder has handled approximately 75 percent of the approximately 96 shipments to Jackson and Vicksburg in 1966.	Shipper has difficulty in obtaining pickup service from Ryder. In one instance there was a delay of 7 days before pickup. Shipper prefers single-line service because its pharmaceuticals are susceptible to damage.	

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, size and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
5. (5) Eastman Kodak Company, Chamblee, Ga. Photographic items	From Chamblee shipper annually ships 1.7 million pounds to New Orleans, La., and 4+2,500 pounds to specified points in Mississippi. It expects its shipments to increase by 25 percent each year through 1971. Its pertinent daily shipments are LTL weighing between 30 and 12,000 pounds. Annually, approximately one-half million pounds is shipped to Jackson, Miss. This represents about 60 percent of the Mississippi traffic. Other Mississippi points include Greenville, Gulfport, Pascagoula, Ocean Springs, Clarksdale, Meridian, and Natchez.	Of it shipments to New Orleans shipper uses Georgia-Florida interlining with Central at Mobile, Ala. On the LTL traffic to New Orleans shipper uses Georgia-Florida interlining with Red Ball or West at Mobile. Ryder is used on truckload shipments to Birmingham and Memphis and on LTL traffic to Birmingham. East Texas handles the LTL traffic to Memphis. Deaton is used to Jackson. Dixie-Dixie was used to Jackson. Johnson is used to Pascagoula, Biloxi, Ocean Springs and Gulfport.	Some of its photographic products require delivery within 24 hours. Delivery beyond 24 hours necessitates the use of refrigerated service. Cole-Dixie, which holds authority from Atlanta to Jackson informed shipper that it could not provide overnight service between these points and that shipper should find another carrier. During a survey period on shipments to Jackson with transit times between 2 and 4 days, Johnson transported a shipment to Tupelo, Miss. rendering next-day service; Deaton rendered 4-day service on shipment to Meridian, Miss.; Johnson rendered 3-day service on a shipment to Keesler Air Force Base, Georgia Highway rendered 4-day service on a shipment to Harrisburg; and on a shipment to Ocean Springs Johnson rendered 4-day service. The exhibit did not necessarily show all the shipments to these points during the study period and some of the [illegible] included intervening weekends.	Red Ball. Its support of the Red Ball application is limited to points in Mississippi and to New Orleans. Shipper considers the service it is receiving to Birmingham and Memphis adequate.
7. (11) Knox Glass, Inc., Forest Park, Ga. (located within the commercial zone of Atlanta, Ga.) Glass container products	From Atlanta TL shipments to Baton Rouge, La. and Houston, Tex. Shipper has movements to Houston and expects to commence shipping to Baton Rouge in June 1968.	On movements to Houston, Deaton originates the shipments and interlines at New Orleans, La., with Missouri Pacific Truck, when the movement to Baton Rouge commences Deaton interlining with Poplarville will be used.	Shipper expresses a need for Deaton's proposed single-line next-day service to Baton Rouge and second-morning service to Houston on TL.	Searcy. The direct-line services of Transcon, Ryder, Roadway, and K.T.M.F. are available from Atlanta to Houston.
8. (16) Postrite Envelope Manufacturing Co., Atlanta, Ga. Envelopes	Outbound shipments move from Atlanta to Jackson and Greenville, Miss. Shreveport, La., Little Rock, El Dorado and Magnolia, Ark. Birmingham, Ala. and Beaumont, Dallas, Houston, Orange, and Waco, Tex. Inbound shipments are received from Akron, Ohio. It has 55 outbound shipments each month with an average weight of 150 to 750 pounds. During a one year period shipper had about 20 shipments to Houston and 10 to Dallas. Shipper has about two shipments a month to Orange. About 15 shipments a year move to Shreveport and about 3 move to El Dorado and Magnolia. Shipper has one shipment a week to Jackson and one shipment a month to Greenville.	Transcon and T.I.M.E. originate the Arkansas shipments. Cole-Dixie is used to Jackson and Birmingham and Gordons handles shipper's Greenville traffic. East Texas handles shipper's Texas and Louisiana shipments. Carriers other than Cole-Dixie are also used on shipments to Birmingham.	Present service is assertedly not always fast enough or consistent and time in transit is an important factor. Shipper is not satisfied with the transit time it receives on shipments to Louisiana, Texas, Mississippi, and Arkansas points. Shipper wants second-day service to points in Arkansas, overnight service to Jackson, second-day service to Louisiana, second or third-day service to points in Texas. Strickland proposes to meet shipper's needs with respect to these transit times. Shipper had one complaint about the transit time on a shipment to Shreveport handled by East Texas.	Strickland. Shipper was generally satisfied with Cole-Dixie's service to Birmingham. It has not received a complaint on the service to Houston, Dallas and Orange. It did receive one complaint regarding the transit time on a shipment to Beaumont but it could not remember who the carrier was. Although shipper has received some complaints regarding the transit times on shipments to Birmingham, it could not recall which carrier handles the traffic. Shipper did not know how many single-line services were available between Atlanta and Dallas, Waco, and Houston.
9. (17) Carpenter Steel Co., Atlanta, Ga. Stainless steel bars	From Atlanta to Houston and Dallas, Tex., and to other unspecified points in Texas. Approximately 100 shipments move during a year to both Dallas and Houston. Almost all the shipments are LTL weighing an average of 500 pounds. During the period of a year approximately 150 orders moved directly to customers located at unspecified points in Texas.	Transcon handles shipper's inbound and outbound traffic. Roadway's service has been utilized to Houston.	Shipper maintains warehouses in Dallas and Houston. Its Atlanta branch has lost business because its Texas warehouses are supplying their customers from shipper's branches in the Pacific Coast because they are receiving better transit time than they can get from Atlanta. The Pacific Coast branches draw their stock from Pennsylvania and Connecticut, and therefore ship to Texas customers received stock from Atlanta. Shipper would save on freight charges. Shipper would like to regain this business. It feels that [illegible] service would assure it of this business. Shipper received 6-day service from Roadway to Houston and six-to-seven-day service from Transcon on a shipment to Marion.	Stricklend. Shipper believes that only Roadway, Transcon and East Texas, are authorized to perform single-line service from Atlanta to Houston and Dallas, but it relates that it has been solicited for this traffic by Mercury and United

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
10. (12) Hundred Company, Conley, Ga. (located in the commercial zone of Atlanta, Ga.) Building materials, hardware and floor tile	From Atlanta to Hattiesburg, McComb and Meridian, Miss., Dallas, Tex., and Blytheville, Ark. Shipper receives at least 15 shipments a month from Houston, Tex. It has between 6 and 10 outbound shipments a month with an average weight between 500 and 1,500 pounds. The inbound shipments weigh between 36,000 and 40,000 pounds. They move to either shipper's Atlanta warehouse or directly to shipper's customers located at points in Mississippi, Alabama, and Louisiana. Common carriers handle about one a month to Dallas and shipper uses its own equipment once a month to Dallas.	To Mississippi points shipper uses the services Deaton, Gardman, Dixie, and Ryder. Shipper uses its own equipment in addition to for-hire carriers, on the inbound traffic from Houston. Mercury originates truckload traffic at Houston and interlines it for delivery at Atlanta.	Shipper expresses a need for Strickland's proposed second-day service on the involved traffic.	Strickland. Shipper is not interested in Blytheville since it handles this traffic in its own equipment. It has eight units and uses common carrier to handle overflow traffic. If the application is granted, Strickland would have to interline on shipments to Hattiesburg and Meridian. Mercury's service interlining to Atlanta from Houston is described as satisfactory. Shipper did not know how many single-line common carriers are authorized to provide service between Atlanta, Houston and Dallas.
11. (13) (a) Pomona Products Company, Griffin, Ga. Canned fruits and vegetables (b) Southern States, Inc., Hampton, Ga. Electrical equipment (c) United Cotton Goods Company, Griffin, Ga., and Dayton, Tex. Cotton textile (d) Southeastern Thermo Corporation, Griffin and Cordele, Ga., and Houston, Tex. Textiles (e) Sparta Furniture and Manufacturing Company, Inc., Sparta, Ga. Furniture	(a) Pomona's traffic moves from Griffin by rail to points in Texas (mostly to its warehouses located at Dallas, Houston and San Antonio, Tex.) and by private carriage to points in Mississippi, Louisiana, and Arkansas. During 1965, shipper had movements of 800,000 pounds to specified points in Arkansas, 500,000 pounds to Louisiana, 7.1 million pounds to points in Texas. (b) Southern's traffic moves from Hampton to points in Louisiana, Arkansas, and Texas. Between 1/31/66 and 5/13/66 it shipped in private carriage 35,000 pounds to points in Louisiana, 22,000 pounds to Arkansas 84,307 pounds to points in Texas. Between 5/2/66 and 5/20/66 it shipped by common carriage 24,792 pounds to points in Texas, 14,510 pounds to Arkansas, 8,126 pounds to Mississippi, 12,030 to Louisiana. (c) United's traffic moves from Griffin. It ships approximately LTL a day to "all destinations." (d) Southeastern's traffic moves from Griffin and Cordele to points served and proposed to be served by applicant. (e) Sparta's traffic moves from Sparta by rail and motor carrier. It ships about one carload of freight and two TL of freight a week.	Pomona and Ryder originate traffic at Hampton and Griffin. Georgia Highway Express and Akers also originate traffic at Hampton. Overnight originates traffic at Griffin and Hampton. Shamdon Freight originates traffic at Sparta. Deaton is used on shipments to points in Mississippi.	(a) Pomona would use applicant's service instead of private carriage and rail if Strickland could provide better service. But even if applicant could provide better service only one third of the rail traffic to Texas would be diverted. (b) Southern States does not have backhauls for its private equipment and if Strickland rendered good transit times it would receive shipper's traffic. (d) Southeastern wants better service with respect to transit time. (e) T.I.M.E. had a restriction on furniture and Dixie has a combination rate restriction to two-line hauls to Mississippi and a portion of Louisiana.	All five shippers support Strickland. Pomona, Strickland, if its application is granted, would not be able to serve the supporting shipper's plants but it would interline at Atlanta. Inasmuch as applicant also would not be able to service all points in Arkansas, Louisiana and Mississippi, traffic moving to these points would still involve at least three-line haul. If the application is granted but Strickland does not enter arrangements with the originating carriers, its services would not be used.
12. (20) Atlanta Freight Bureau, Atlanta, Ga.				The witness was presented by Strickland but indicated that no particular applicant is being supported. The Bureau, a civic, nonprofit traffic and transportation service composed of 550 members which are shippers and receivers of freight left to the judgment of the Commission to determine what proposals might be needed to give adequate service between Atlanta, on the one hand, and, on the other points in the territories applicants seek to serve.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type [illegible]	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (21) Fox Manufacturing Company, Rome, Ga. Furniture.	From Rome shipper has about 10 shipments a week to points in Texas, each shipment weighs between 25 and several thousand pounds with the average shipment weighing about 600 pounds. The majority of these shipments move to Dallas, Tex.	Baggett, Georgia Highway, Ryder, and Southern Railway.	Shipper maintains a furniture market and showroom at Dallas and it would like to be able to have samples arrive there on schedule. Baggett has rendered shipper very satisfactory service. Shipper has no direct single-line service from Rome to the Dallas-Fort Worth, Tex., area on furniture. While Ryder holds authority from Rome to Houston, Tex., it generally will not handle shipper's traffic to Houston. Roadway also holds authority from Rome to Houston and Dallas but it will not handle shipper's products. Shipper prefers single-line service because of the fragile nature of furniture. Also trucking would be facilitated and claims would be handled better.	Baggett, Georgia Highway's service is described as satisfactory. This carrier can originate the traffic and interline at Atlanta with any one of a number of carriers holding authority from Atlanta to Dallas. Several carriers also hold single-line authority from Atlanta to Houston and Beaumont. Additionally, Baggett originates the traffic and interlines at Birmingham or Mobile, Ala., with several carriers which hold single-line authority to Houston or Beaumont. This carrier could also interline at New Orleans.
[illegible] (22) General Electric Company, Rome, Ga. Transformers and switches.	From Rome to Houston and Dallas, Tex. During a representative 3 month period about 122,750 pounds in lots of 2[illegible],000 pound averages and 1[illegible],000 pounds of LTL traffic varying in size from 50 pounds to 7,000 pounds is shipped to the Dallas and Houston areas.	Bell and L & N have single-line authority to Dallas and Houston and are used on an irregular basis. Southern Railway is used on a regular basis. Baggett's services have also been utilized. And, Mercury has been used as a delivering carrier to Dallas and Houston.	Shipper wants to have direct, single-line service between Rome on the one hand, and on the other, Houston and Dallas. It does not use the single-line service of Roadway and Ryder because these carriers essentially do not provide it with the type of service it needs. Shipper occasionally requires special equipment.	Baggett, Roadway Express and Ryder have single-line authority from Rome to Houston. And, Roadway has single-line authority to Dallas. Shipper was aware that other carriers can interline with Baggett at Birmingham or Mobile and transport its traffic directly to Dallas or Houston. Shipper has utilized the services of Roadway for 13 years but not to points in the southwest on outbound traffic. Ryder maintains a terminal at Rome.
[illegible] (28) Union Camp Corporation, New York, N. Y. Paper products, tall oil products, turpentine, rosin, and synthetic plastics.	From shipper's plants located at Savannah, Chamblee (Atlanta) and Stone Mountain, Ga., and from its pulpboard mill at Montgomery, Ala., to points in the Southwest and Kansas City, Mo. From Savannah shipments will move to named representative points in Arkansas, Mississippi, Texas, Louisiana, and to Kansas City, Mo., and Tulsa, Okla. From Stone Mountain shipments move to Russellville, Ark., and Kansas City, Kans. From Chamblee shipments move mainly to specified points in Mississippi, Arkansas, and Louisiana. In 1965 shipper moved 1,500 tons by motor carrier from Savannah to points in the involved destination territory, 1[illegible] tons from Chamblee, and 96 tons from Stone Mountain. Both TL and LTL shipments will move from Savannah. Only LTL shipments will move from Chamblee and Stone Mountain. Approximately 1.1 million pounds moved from Savannah in TL and LTL lots to Kansas City. This traffic moves between two and four times a month.	From Savannah to Little Rock, Ark., Kansas City, Kans., and Fort Smith, Ark. Bowman originates and interlines with Mercury, Gordons, Jones, Red Line, and Watson-Wilson. To Kansas City, Kans., and Tulsa, Okla., Bowman originates and interlines with Watson-Wilson and Jack Cole. Mall originates traffic to points in Mississippi. Roadway and Merrin have been used in single-line service to points in the Southwest and to Kansas City. McLean originates traffic to Olathe and Topeka, Kans., interlining with Crouch and Freightways. Ryder and Transcon are used from Stone Mountain and Chamblee.	Shipper has had difficulty in obtaining equipment from Roadway. It does not want to have to rely solely on the services of Merrin. Because Merrin's Savannah terminal closes at 6 p.m. some of shipper's traffic can be delayed up to 18 hours in transit time. Shipper introduced an exhibit showing that on specified shipments from Savannah to points in Kansas, Texas, Oklahoma, Arkansas, and Mississippi the transit times were not satisfactory. Arkansas Best refused to interline at Memphis and deliver shipper's traffic to points in Arkansas, Texas, and Oklahoma. From Savannah shipper wants 2- or 3- day service on TL and 3- to 4 day service on LTL to Kansas City and to Topeka and points in Arkansas, Texas and Louisiana. To Mississippi it wants 1- or 2-day service on TL and 3-day service on LTL. From Chamblee and Stone Mountain shipper wants 3-day service on TL, and 3-day service on LTL shipments, to Kansas City, 2 days on TL and 3 days on LTL to Arkansas, Louisiana, and Texas, and to Mississippi, next-day service on TL and 2- or 3 day service on LTL.	Bowman, Johnson, Jones. Bowman's service is satisfactory. Bowman's service from Savannah to Atlanta is described as good. Merrin's service is discussed as satisfactory. Shipper indicates that if it had the services of Johnson and Bowman in addition to Merrin from Savannah it would have adequate service. Shipper has no complaints with respects to the service of Ryder.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
16. (32) Wilson Jones Company, Atlanta, Ga. Loose-leaf devices and forms.	Inbound shipper receives shipments from Chicago, Ill., and Elizabeth, N. J. at its Atlanta warehouse. Outbound from Atlanta it ships to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, Vicksburg, and Greenville, Miss. During the first 5-months of 1966 shipper had 144 shipments to points in Mississippi, weighing a total of 19,819 pounds, with the average shipment weighing about 170 pounds.	Johnson is used to Mobile, Ala. and Bowman is used to Birmingham, Ala., Dixie and Georgia Highway are used interlining at Birmingham	Shipper expresses a need for second-day single-line service to the Mississippi points named. It has limited dock space and therefore wants the number of carriers serving it limited.	Bowman and Johnson. Deaton's service along with that of Bowman, Dixie, and Johnson is described as satisfactory.
17. (33) General Aniline and Film Corporation, New York, N. Y. Photographic and reproduction materials	From shipper's destination center at Atlanta, Ga., to the Jackson, Mississippi area and the Baton Rouge, La., area. Approximately 120,000 pounds a year moves to Mississippi and 50,000 pounds moves to Louisiana annually. During the first 5 months of 1966 shipper had 23 movements weighing a total of 21,218 pounds collectively to Jackson and Vicksburg, Miss. Only three of the shipments moved to Vicksburg	The single-line services of Dixie and Ryder are used on shipments to Mississippi. Of the 23 shipments moving to Mississippi points in the first months of 1966 Ryder handled only 2	Shipper wants 2-day service to points in Mississippi. It indicates that its present service is not satisfactory. It receives complaints almost every week about service from one consignee at Jackson.	Bowman and Johnson. Shipper has used the services of Bowman and Johnson and describes them as satisfactory. Shipper has not made an investigation to determine what other services are available from Atlanta to its destination territory.
18. (34) Nemer, Inc., Atlanta, Ga. Chemicals and sanitary supplies	From Atlanta to its 100 customers located at Meridian, Jackson, Laurel, Greenville, Vicksburg and Columbus, Miss., shipper has about 6,000 pounds moving each week. To Laurel it has weekly shipments ranging from 100 to 36,000 pounds. If single-line service were available shipper would have traffic moving to points in Louisiana and Arkansas.	On shipments to the named Mississippi points, United or Alabama Georgia originates the traffic and interlines at Birmingham with Campbell and West. Occasionally Deaton and Baggett originate the traffic. Bowman also originates the Mississippi traffic interlining with West.	Shipper wants second-day service from Atlanta to the named Mississippi points. Baggett holds shipments at Birmingham sometimes as long as 15 days, even though shipper has complained of this practice. Shipper has experienced delays in pickups with Deaton.	Bowman, Johnson and Jones. Ryder has been used on shipments to Mississippi. However, shipper complains of delayed pickups with this carrier. Shipper uses the services of Bowman and Johnson and indicates that they are satisfactory.
19. (36) Briercliff Mills, Atlanta, Ga. Lingerie	From Atlanta to specified points in Arkansas, Louisiana, Texas, Missouri, Oklahoma, Florida, and Mississippi, during the past 4 months of 1966, shipper had 51 shipments with a total weight of 8,364 pounds and with a average weight of 164 pounds a shipment.	T.I.M.E., Ryder, East Texas, Johnson Gordons, Dixie and Deaton. Additionally shipper uses the Southern Railroad. Johnson handles shipper's Louisiana traffic in single-line service. Dixie and Deaton handle shipper's Mississippi traffic.	Shipper has limited dock space and needs consistent pickup service to keep the dock area from becoming overcrowded. It prefers single-line service and wants second- or third-morning delivery to points in Mississippi, fourth- morning delivery to Arkansas; fourth-morning delivery to Texas, third-morning to Louisiana, and fourth or fifth-morning to Missouri	Bowman, Johnson, and Jones. Shipper did not know of any direct service to points in Texas. Johnson service to New Orleans, La., is described as good. Shipper complains generally about the pickup service of Ryder after it merged with Hoover. However, it had no complaints with respect to the service rendered by Ryder in first 4 months of 1966. It did not know whether or not there is a single line service from Atlanta to Houston, Dallas, and Fort Worth, Tex., and points in Arkansas. Also, shipper did not know the points T.I.M.E. could serve direct.
20. (45) Black and Decker Company, Atlanta, Ga. Powertools	From Atlanta to Memphis, Tenn., and to New Orleans, Baton Rouge, Lafayette, Harvey, Metairie (both Metairie and Harvey are located within the commercial of New Orleans.); Houston, Alexandria, New Iberia, Morgan City, and Lake Charles, La. with daily shipments to New Orleans and one or two shipments a week to each of the other points. Shipments range from a minimum weight to 1,500 pounds, with the average shipment weighing between 200 and 300 pounds.	Ryder's and Cole's service have been utilized. Cole is used on shipments to New Orleans.	Shipper is not receiving satisfactory transit time from Cole. It wants the service of a carrier capable of serving all of its destination territory so as to avoid congestion at its loading dock. Shipper attempted to use Baggett's service to New Orleans but could not receive satisfactory pickup service.	Memphis. Shipper has not made an investigation to ascertain the availability of carriers to Memphis, New Orleans, or any of the other named destination points. Shipper is satisfied with Ryder's pickup service.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
21. (46) Rayhan of Georgia, Inc. Atlanta, Ga. Wall board, fibre glass, metal mouldings, and adhesives	From Atlanta to Baton Rouge, New Orleans, Lake Charles, Lafayette, Shreveport, Monroe, and Alexandria, La., Jackson, Meridian, Biloxi, Gulf Port, Miss., Little Rock and El Dorado, Ark., and Dallas, Fort Worth, Houston, Waco, Tex. Shipper has four movements a month to New Orleans, about two movements a month to each of the remaining named Louisiana points; one a month to the Mississippi points and about five times a month to the named Texas points. It expects to ship to the Arkansas points. Its shipments are TL and LTL.	Ryder, Central, Cole Dixie, Johnson, Deaton, and Overnight with Herrin. Johnson, Overnight and Ryder used to New Orleans. East Texas is used to Fort Worth and Dallas. Sometimes Overnight originates Houston traffic and interlines it at Macon, Ga., with Herrin.	Shipper has experienced problems with Ryder on pickups and slow delivery.	Herrin and Red Ball.
22. (47) Marsh Wall Products Division of Masonite Corp. Atlanta, Ga. Wall paneling, adhesives and allied products	From Atlanta shipper has daily movements to points in Louisiana, including Baton Rouge, Lafayette, Lake Charles, Harvey, and New Orleans. The shipments range from a minimum weight to 15,000 pounds with the average shipment weighing about 800 pounds.	Johnson, Dixie, and Ryder	Shipper wants single-line service. Johnson renders good pickup and delivery service. However, when shipper's traffic has to be interlined there are delays. Dixie renders good pickups service but shipper has had complaints with respect to its transit times. Because shipper's product is susceptible to damage it does not want to have to rely on interline service.	Herrin and Johnson. Shipper has had some difficulty in obtaining pickup service from Ryder. Deaton and Baggett hold authority from Atlanta to New Orleans. Shipper has used Deaton.
23. (48) Life Time Plan Products, Franklin Parks, Illinois Mattress covering and ticking	From shipper's Conyers, Ga., plant to its plant at Mesquite (which is located in the Dallas, Tex. commercial zone) and Houston, Tex. Shipper has 50 to 75 expedited movements a month to the two Texas points with an average weight of 500 pounds.	East Texas, Ryder, and Roadway are used from Atlanta to Houston, and Transcon and East Texas to Mesquite. Owens originated the traffic at Conyers and interlines at Atlanta with the above-named carrier. Shipper, however, has commenced using its own equipment to deliver the shipments to Atlanta. Roadway and Johnson made pickups at Conyers for a short period. Roadway and Gordons were used from Atlanta to Mesquite.	Shipper wants between 2- 4-day service from Atlanta to Houston. It must be consistent service. East Texas is not rendering consistent service from Atlanta to Houston. Shipper introduced an exhibit showing transit time for a 6-month period from Conyers to the two Texas points. To Houston shipper received between 3- and 8-day service. To Mesquite it received between 3- and 9-day service. Intervening week-ends and holidays were included in computing the transit times.	Strickland. Roadway holds single-line authority from Conyers to Mesquite and Houston. Shipper's use of its own equipment from Conyers to Atlanta has improved transit time to the Texas points. It will continue handling the portion of the movement even if the application is granted. Shipper would rather have consistent 4-day service than have some shipments delivered in 2-days and others delivered in 3- or 4-days.
24. (49) Warner-Slimmer Lingerie Co., Chamblee, Ga. (Atlanta) Ladies Foundation garments	From Atlanta shipper moves between one and five shipments each day weighing between 70 and 300 pounds to New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lafayette, and Lake Charles, La., and between two and six shipments a day weighing between 60 and 300 pounds, with some shipments weighing 1,000 pounds, to Dallas, Fort Worth, Beaumont, Waco, Galveston, Laredo, and San Antonio, Tex.	Johnson, Dixie, Gordons, East Texas, Georgia Highway, and Ryder. Gordons is used to Dallas and Fort Worth in single-line service.	Shipper has experienced problems with the pickup service of Georgia Highway and Dixie.	Herrin and Red Ball. Ryder has taken shipper off regular pickup list. Shipper aware that Roadway offers single-line service to Fort Worth and Dallas, and that Johnson, Ryder, Deaton, Baggett, and Dixie offer single-line service to New Orleans.
25. (51) Cochran and Company, Atlanta, Ga. Brass fittings	Inbound shipper receives one movement a week from Nacogdoches, Tex. The movements are in LTL lots and weigh about 5,000 pounds. Occasionally shipper has a TL movement.	Shipper had used Red Ball and Bowman interlining at Memphis, Tenn. It terminated this routing and began using Ryder or East Texas as the delivering carrier through Shreveport, La.	Shipper introduced an exhibit which indicates that on 23 shipments picked at random or selected to show both poor and good service it received inconsistent and inadequate service. The shipments moved from Nacogdoches to Atlanta between 5/27/65 and 7/16/66. All but two of the shipments involved weekends. Most of the shipments had a transit time of 5 days including weekends and the transit times varied from 3 to 10 days including weekends. The shipment requiring 10 days was delivered by Bowman. Shipper wants single-line, 2-day service from Nacogdoches to Atlanta. It would be satisfied with Herrin's proposed Friday to Monday or Tuesday service.	Herrin, Bowman, Johnson, and Strickland. Herrin and Red Ball are the only applicants authorized to serve Nacogdoches.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
26. (Sf) Avon Products, Atlanta, Ga. Toilet preparations and related items	From Atlanta to all points in the territory Red Ball presently serves primarily shipments will move to Jackson, Miss., and Alexandria, Baton Rouge, and Shreveport, La. Approximately 130,000 pounds moves monthly with the average weight of each shipment between 200 and 5,000 pounds.	To Shreveport shipper uses two-line haul of Cole and Red Ball interlining at Jackson. To Baton Rouge it uses Cole interlining with SAIA at New Orleans. Johnson was used to originate shipments to Baton Rouge. To Alexandria shipper uses Cole interlining with Red Ball. Shipper uses Cole to Jackson.	Shipper has had difficulty in receiving scheduled service on shipments handled in interline service. Shipper supports Red Ball to Jackson because it does not have the selection of carriers it would like.	Red Ball. Shipper is aware that to Jackson it has the direct, single-line services of Cole, Deaton, and Ryder.
27. (Ss) Lathem Time Recorder, Atlanta, Ga. Time recording machines, equipment, and supplies	From Atlanta shipper has about 50 to 75 movements each month to those points in Texas and Louisiana served by Red Ball. Shipper's average movement weighs about 100 pounds.	On westbound traffic from Atlanta, shipper uses T.I.M.E., Transcon, Ryder, C.F.A., Watson-Wilson, Gordons, Dixie, R.E.A., and on occasion, Johnson.	Shipper wants single-line service	Red Ball.
28. (Ss) S. S. Squibb & Sons, Division of Olin Mathieson Chemical Corporation, Atlanta, Ga. Drugs and medicines, toilet preparations and related merchandise.	From Atlanta shipments move to Jackson, Greenville, Vicksburg, Natchez, and Gulfport, Miss., and Mobile, Ala. Shipper is primarily concerned with points in Mississippi, especially Jackson. In the first 3 months of 1966 it had 130 shipments from Atlanta to Jackson, varying in weight between 16 and 843 pounds. For the same period in 1966 it had 127 shipments to Jackson, with the average shipment weighing about 700 pounds.	To Jackson, shipper uses REA and Alabama Georgia Express interlining with West. To Natchez it uses REA and GFA. To Vicksburg it uses REA and also GFA to Mobile, Ala. interlining with Red Ball.	Shipper's traffic must often have protection in transit from heat and cold. It stopped using Dixie to Jackson because of customer complaints regarding transit time. Consistency of service is important because shipper's customers do not maintain large inventories. Expedited service is required in pharmaceuticals and on shipments to hospitals. Shipper has limited loading facilities and wants the services of a carrier that can serve all of the involved points so that congestion at the loading dock can be avoided.	Red Ball. Shipper was aware that Cole had single-line authority to Jackson. It indicated that it was willing to try Ryder's direct single-line service to Vicksburg and Jackson. It is not seeking service to Mobile. Shipper had not tried service of Dixie after it changed ownership.
29. (Ss) Jason Manufacturing Company, Michigan City, Ind. Plumbing specialties	From shipper's Atlanta warehouse small LTL shipments move weekly to Baton Rouge, Houston, and Shreveport, La.; once a month to Dallas, and occasionally to the Houston area. The average shipment weighs 300 pounds.	To the three Louisiana points shipper uses Johnson to New Orleans interlining with a connecting carrier. Roadway is used to Dallas and Houston and Fast Texas to Dallas.	Because of poor transit times from Atlanta to Louisiana shipper had to commence supplying its Louisiana customers from its smaller Dallas warehouse. If it received second-day service to the named points in Louisiana from its Atlanta warehouse it believes it would be able to again serve its Louisiana customers from Atlanta.	Deaton. Shipper uses Deaton to Jackson, Miss. and is satisfied with the service.
30. (Al) Coats & Clark's Sales Corp., New York, N. Y. Cotton thread and yarn, zippers, wool, and synthetic yarns and related sewing articles	From shipper's Atlanta warehouse it has two TL a week moving to its Dallas, Tex warehouse. Between 1/1/66 and 5/31/66 shipper had 49 movements to Dallas weighing a total of 1.3 million pounds.	Deaton originates the shipper's traffic and interlines at Greenville, Miss. with Jones.	Shipper computerized its stock control on a 2-day transportation service basis and consistent transit times are therefore important. Shipper prefers single-line service and expresses a need for Deaton's proposed 3-day service.	Deaton. Shipper's experiences with the Deaton-Jones service has generally been good. It has experienced only a few instances of inadequate service when Jones was unable to supply trailers at the interchange point. Shipper is aware that Roadway had single-line authority to Dallas but did not trade for sure which other carriers held single-line authority to this point. It did not investigate other joint-line services because it has been satisfied with the service of Jones and Deaton.

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[illegible] Areas of supporting shippers [illegible]

[illegible]

[illegible]	[illegible]	Existing service [illegible]	Reasons for supporting application	Application supported and remarks
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
38. (87) Quality Pack Envelope Co., Inc., Atlanta, Ga. Envelopes.	From Atlanta shipper has a shipment every 2 or 3 weeks weighing 20,000 to 25,000 pounds to Dallas, Tex., every 3 weeks weighing 600 pounds to Columbus, Miss., every 2 weeks weighing 600 pounds to Greenwood, Miss.; every 3 weeks weighing 400 pounds to Laurel, Miss., every 3 weeks weighing 500 pounds to Meridian, Miss., every 3 weeks weighing 400 pounds to Pascagoula, Miss., every 2 weeks weighing 400 pounds to Vicksburg, Miss., every week weighing 800 pounds to Greenville, Miss.; and every 2 weeks weighing 1,000 pounds to Jackson, Miss.	To Dallas shipments have been handled by Gordons. To Mississippi shipper has used Dixie and Beaton and Georgia Highway interlining with Campbell, GFA interlining with Hunt, and Jorneon interlining with Hunt.	Shipper wants single-line service to the destination territory. It has received a few complaints with respect to Gordons' service to Dallas. Between November 1963 and June 1964 shipper had to trace three shipments handled by Gordons. Gordons service has improved. Shipper has received numerous complaints regarding the single-line service of Beaton and Dixie to Mississippi points. Shipper wants second- or third-morning service to Dallas, and second morning service to points in Mississippi. It lost one customer at Natchez, Miss. because of poor motor carrier service.	Bowman and Johnson. Shipper uses the services of Bowman and Johnson and has found both to be satisfactory. Shipper indicated that Gordons, East Texas, and Roadway have single-line service to Dallas from Atlanta with respect to the points to which shipper has had difficulties with Beaton and Dixie, namely, Tupelo, Columbia, Kosciusko, Brookhaven, Aberdeen, and Corinth, Miss., shipper indicates that neither Johnson nor Bowman proposes to serve these points. Johnson, Jones, and Bowman.
39. (87) Dunkin, Inc., Atlanta, Ga. Wallpaper and wall covering	From Atlanta to specified points in Mississippi, Louisiana, Texas, Oklahoma, and Missouri. From points in the New York, N. Y., commercial zone, Wharton, N. J., and Buchanan, N. Y. to Dallas and Houston, Tex. The shipments from New York City move principally in LTL lots and average 1,500 pounds a week. The shipments from Wharton move almost daily and weigh between 1,000 and 4,000 pounds.	From New York City to Dallas and Houston, shipper is using Johnson, N.C., and Ayers and their connections. T.I.M.E. is used to Oklahoma and Missouri. East Texas is used on shipments to points in Texas. Johnson is used to Louisiana, and Roadway has been used to St. Louis, Mo., and Houston, Tex. Public Carloading has been used from Wharton and Buchanan to Dallas.	From Atlanta shipper wants second- or third-morning delivery to Texas, Arkansas, Missouri, and Kansas City. Third day service to Oklahoma and second-day service to Mississippi and Louisiana points is requested. During the first 5 months of 1964 shipper had 11 movements totaling 3,981 pounds handled by Republic Carloading from Wharton and Buchanan to Dallas, including weekends the average transit time was 6 days.	
40. (89) Caramel Carpet, Dalton, Ga. Carpet	From Dalton to Dallas, Houston, and Fort Worth, Tex. Between 1/1/64 and 5/31/64 shipper had 33 movements to Houston weighing a total of 40,849 pounds, 29 TL to Dallas weighing a total of 599,819 pounds; and 5 movements to Fort Worth weighing a total of 3,760 pounds. All of the shipments to Fort Worth and Houston are to customers. It has a distribution warehouse at Dallas and additionally ships directly from Dalton to customers located at Dallas. Each Friday shipper has a TL movement to Dallas. The above tonnage figures to Dallas include 70,000 pounds shipped by rail.	From Dalton to Dallas shipper has used Gordons, East Texas, Roadway, Mercury and the Rock Island and Missouri-Pacific Railroads. Only Roadway provides single-line service. Georgia Highway originates and interlines with Gordons and East Texas at Atlanta, Ga., and Mercury at Birmingham. Shipper also uses private carriage to the Texas points. Roadway also handles shipper's Fort Worth and Houston traffic.	Shipper prefers single-line service. It is not satisfied with the transit time of Roadway. On two occasions Gordons would not accept the Friday TL movement to Dallas until Tuesday. On the Friday TL movements shipper wants delivery by the following Tuesday. On LTL traffic it wants 3-day service when it is handled in single-line service and 4-day service when it is interlined. Shipper introduced as an exhibit showing transit times including weekends on 17 randomly picked shipments to Texas and Oklahoma points. To Dallas, Georgia Highway interlining with Mercury delivered one shipment in 4 days; two in 5 days, and one in 13 days. Roadway to Dallas delivered two shipments in 5 days, three in 6 days; and one shipment in 8 days. Georgia Highway interlining with Mercury to Houston, delivered one shipment in 4 days and one in 5 days. Roadway handled one shipment to Houston in 7 days and one to Waco, Tex. in 7 days.	Bowman, Johnson, and Jones. Shipper uses Bowman's service and is satisfied with it. Johnson and Jones would handle shipper's traffic from Atlanta with Georgia Highway originating it. Shipper could not cite one instance in the year before the hearing when it had lost business because of a lack of transportation service. It has not routed its shipments to Dallas and Fort Worth by Bowman originating and interlining with Dixie at Memphis, Tenn. because it was not aware of such service until a few weeks before the hearing. It plans, however, to use this routing if it can obtain good service.
41. (90) Wartnes Co., Atlanta, Ga. Tractor parts.	From Atlanta to Baton Rouge and Monroe, La., Dallas, Fort Worth, and Houston, Tex., and Hattiesburg, Laurel, and Jackson, Miss. All of the shipments are in LTL lots of approximately 2,000 to 3,000 pounds. Five or six shipments a month move from Atlanta to these points. Also, shipper has occasional movements from its warehouse at Dallas to Atlanta. The shipments to Baton Rouge and Monroe move only when shipper's Dallas warehouse does not have the items. During 1964 shipper had between 25 and 30 shipments to Jackson.	Ryder has handled the shipments to Baton Rouge and Monroe. To Houston, East Texas, Roadway and Ryder have been used. To Dallas and Fort Worth Gordons, Roadway, and Transcon have been used. Coles was used on shipments to Jackson. GFA interlining with Hunt is used to Hattiesburg and Laurel. Johnson has been used in single-line service and in interline service to Laurel.	Shipper has experienced difficulties with existing service. It prefers single-line service. In 1963 shipments to Baton Rouge and Monroe were switched from Atlanta to Dallas because customers complained about transit times from Atlanta. Shipper has received a number of complaints regarding the interline service of GFA and West to Hattiesburg and Laurel. Shipper complains that Dole picked up a shipment on 2/2/64 and when shipper called Dole the following day it was still on Coles dock. Roadway's service is assertedly generally unsatisfactory. The only specific problem shipper has had with East Texas was with respect to the transit time requested on one shipment which moved in January 1964.	Bowman, Johnson, Jones, and Floyd & Beasley. Johnson single-line service has been used by shipper and it has found the service satisfactory. Shipper believes that the only single-line service between Atlanta and Jackson is Dixie. It has not made an investigation to determine if there is other single-line service between these points.
42. (91) Fridex, Inc., Atlanta, Ga. Electronic calculators	Outbound from Atlanta shipments move about twice a week to its branch offices at Lafayette, Lake Charles, Baton Rouge, and Shreveport, La., and Beaumont, Dallas, Fort Worth, and Houston, Tex. Inbound shipper receives machines at Atlanta for repairs from the above-named points. The shipments weigh between 32 pounds and 65 pounds	Ryder, Dixie, Greyhound Bus, Air Freight, East Texas, and Transcon.	Shipper wants a consistent second-day service. Transit time is important to shipper. It has had to rely heavily on bus service to get expeditious service. With Ryder shipper indicates that it experienced difficulties in getting pick-up service	Harris. The service it has received from bus lines is described as satisfactory.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (96) Chicago Pneumatic Tool Company, Atlanta, Ga. Pneumatic tools and parts and air compressors and parts.	From Atlanta to points in Louisiana, such as New Orleans, Harvey, Baton Rouge, Alexandria, Shreveport, and Lake Charles, [illegible] Texas, [illegible] Dallas, Fort Worth, and Beaumont. Shipments range in size from 70 pounds to 5,000 pounds, with the average shipment weighing 200 pounds. Shipper has two movements to New Orleans weekly.	Roadway, Ryder and Georgia Highway in connection with Mercury have been used on this traffic.	Shipper cannot obtain pickup service from Ryder. [illegible] has had complaints in the transit times [illegible]	Herrin. Shipper has no complaints with respect to the transit times on [illegible] Roadway. It has no complaints on Johnson's service to New Orleans and does not support Herrin for authority to New Orleans.
[illegible] (97) Will Scientific, Inc., of Georgia, Atlanta, Ga. Scientific instruments, chemicals, and laboratory glassware.	From Atlanta to Taft and Mahnville, La. Shipper has two movements a week to both Taft and Mahnville. The shipments weigh between 5 and 500 pounds.	Ryder interlining with Pacific is used to Taft. Dixie, RLA and Air Freight are also used to Taft. With shipments handled by RLA, [illegible] must pick-up the shipments at [illegible]	Time in transit is important to shipper since its products are used on research projects. Shipper has received complaints from Taft and Mahnville customers relating to transit time and breakage with the existing service.	Herrin.
[illegible] (99) Williamson Southern, Inc., Atlanta, Ga. Coated pulpboard, synthetic gums or resins, cartons of rubber compounds, chemical solutions, and rubber coated cloth.	From Atlanta shipments are made weekly to Monroe, New Orleans, Hodge, Bogalusa, and Zee, La., Jacksonville and Orange, Tex., Crossett and Pine Bluff, Ark. Approximately 10,000 pounds moves outbound a month, and shipments varying in weight between 80 and 8,000 pounds. About 1[illegible] pounds moves to New Orleans monthly, and approximately 1,000 pounds moves to Pine Bluff monthly. Shipments to Orange and New Orleans move mostly from shipper's Dallas, Tex., facility because of the better service it receives from this point.	T.I.M.E., East Texas, Gordona, Dixie, and Johnson are used in this traffic, Johnson and A.N.D. handle the New Orleans traffic in single-line service. [illegible] and Red Ball interline at Jackson, Miss., on the Monroe, Hodge, Zee, and Bogalusa traffic. East Texas handles Orange and Jacksonville traffic in single-line service.	[illegible] generally has received complaints indicating that the transit times of its shipments to the involved points is slow, and that shipments have been lost.	Red Ball and Johnson. Shipper has used the services of Red Ball and Johnson and describes them as satisfactory. It has not had any complaints on the Atlanta to Shreveport traffic which Johnson proposes to handle. Shipper's customer in New Orleans has specified that it wants Red Ball to transport its shipments from Dallas because it gets better service from Dallas than it gets from Johnson from Atlanta. Shipper did not know that there are four other carriers besides Johnson offering single-line service from Atlanta to New Orleans.
68. (100) Yates American Machine Company, Atlanta, Ga. Woodware machines, woodwork machine parts, planes and chipper knives and veneer tape.	From Atlanta shipper moves about 5,000 pounds a week to points in East Texas, Louisiana, Mississippi, and Arkansas. The average weight of the shipment is about 90 pounds. Shipments move to Corrigan, Jacksonville, St. Augustine, Center, Jasper, and Livingston, Tex., among other unspecified points in this State.	Dixie, Dixie, Baggett, Bowman, and T.I.M.E. Dixie originates the traffic to the Louisiana and Texas points. T.I.M.E. performs a single-line service to some of the Arkansas points.	Shipper has received complaints from consignees in Texas and Louisiana regarding the existing motor carrier service. It normally allows 7 days for delivery to two points in Louisiana. Shipper has experienced difficulty in obtaining pickup service for Ryder. It has experienced difficulty in tracing interline shipments which were originated by Dixie. Dixie responds to the tracers in a reasonable time but the connecting carriers take 2 or 3 weeks to reply. One of the connecting carriers is Red Ball.	Red Ball and Herrin.
67. (101) Westinghouse Parts Center, Atlanta, Ga. Appliance parts	Outbound from Atlanta shipper has about 15 shipments a month to New Orleans, La.; 6 shipments a month to Shreveport; 6 a week to Baton Rouge, La.; 1 or 2 a month to Morgan City, La.; 1 or more a month to Natchez, Miss.; 3 a month to Alexandria, La.; 3 a month to Lafayette, La.; and on several occasions to other specified Louisiana points. Shipper also has occasional movements from Atlanta to Jackson, Miss., and ships to a portion of Texas and to Alabama. Shipper's outbound tonnage is approximately 3,000 pounds a week with the average shipment weighing about 90 pounds. Inbound, shipper receives at Atlanta about 25 [illegible] shipments a month of retained parts from the above-specified points. The total monthly tonnage is about 2,000 pounds with the average shipment weighing 80 pounds.	Johnson, Georgia Highway, R.E.A. and has service. Dixie and Ryder are used at a customer's direction. Johnson originates traffic to all of the Louisiana points and interlines it with connecting carriers. It renders single-line service to New Orleans.	Time in transit is important to shipper customers do not carry large inventories. Most of its shipments are of an emergency nature. Shipper has had complaints from customers located in the destination territory about transit times. Shipper prefers single-line service because it lessens the risk of damage. It is supporting these two applications so that it will have a choice of service.	Red Ball and Johnson.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
48. (103) Orkin Exterminating Co., Inc., Atlanta, Ga. Metal agricultural insecticide liquids, agricultural insecticide dusts and related articles and cosmetics	From Atlanta shipper has movements to points in Louisiana, Colorado, Texas, New Mexico, Arkansas, and Mississippi. Approximately 600,000 pounds moves these points annually. The average shipment weighs between 30 pounds and 500 pounds. Shipper has branches at 12 Texas points including Dallas, Beaumont, El Paso, Fort Worth, San Antonio, Houston, Austin, Corpus Christi, and Lubbock, Tex., and at 5 Louisiana points including Baton Rouge, New Orleans, Lafayette, Alexandria, Monroe, Shreveport, Lake Charles, New Iberia, and Crowley, La. It has a monthly shipment moving to each of its branches from Atlanta. Additionally during the month it has "fill-in" orders to the branches.	Cole, Deaton, Bowman, Dixie, Transcon, REA, T.I.M.E., Gordons, and Johnson. Dixie originates shippers Texas and Louisiana traffic and interlines at Jackson, Miss.	Shipper has received complaints from its branches regarding transit times. It prefers single-line service because it can obtain better service, faster delivery, and there is less chance of loss. Shipper expresses a need for the proposed second-day service to points in Texas and Louisiana and first-day service to New Orleans and Jackson. Shipper introduced an exhibit covering 52 shipments between 7-2-65 and 9-15-65 to bare pertinent the shipments moved from Atlanta to points in Texas and Louisiana. They involve about 50 percent of the traffic to these destinations and are listed because shipper received a complaint regarding each shipment. All of them were originated by Dixie-Cole and interlined with Red Ball. Excluding weekends two shipments were delivered to Baton Rouge in 2 days. Including weekends the transit times to destinations in these two States ranged between 3 and 7 days. One shipment to Beaumont involved 8 days.	Red Ball and Herrin. Shipper is primarily interested in service to Texas and Louisiana points. It is only aware of the single-line service of Roadway and East Texas from Atlanta to Fort Worth, Dallas, Houston, Austin, and San Antonio.
49. (103) Printpack, Inc., Atlanta, Ga. Cellophane or plastic bags, packages and wrappers.	From Atlanta shipper has movements twice a month to Abbeville, Lafayette, and Rayne, La., weighing 500 pounds to 5,000 pounds each. Additionally four or five times a year it has 7L shipments averaging 30,000 pounds. Shipper also has one movement a week to Baton Rouge, La., weighing between 1,500 and 2,000 pounds, and one a week to New Orleans, La., weighing 2,500 pounds or more. Shipments move to Alexandria, La., about once or twice a month and weigh about 2,000 pounds.	Ryder, Dixie, Johnson, Bowman, and Central. Bowman originates the Abbeville, Lafayette, and Rayne shipments and interlines at Memphis, Tenn. with Herrin. Ryder is used to Baton Rouge and was used to Alexandria. Central is used to New Orleans. Johnson also handles this traffic, and Dixie has been used to New Orleans. Johnson also interlines shipments at New Orleans. Sain is used into Abbeville and Rayne.	Shipper prefers single-line service. It has received complaints with respect to delayed service. And, it has complained to Johnson regarding shipments to or through New Orleans. Five days are allowed for delivery in interline shipments to Abbeville, Lafayette, and Rayne. Shipper is not satisfied with Ryder's service because of delays in deliveries. It has had difficulty in tracing shipments.	Herrin. Shipper was not able to give specific example of the inadequacies of Ryder's service. Dixie's service to New Orleans was only tried once or twice.
50. (10b) Rubatex Corporation, Decatur, Ga. (Atlanta) Refrigerator and cooling insulating material.	From Atlanta shipper has two or three shipments a week to Alexandria, Baton Rouge, Lafayette, Lake Charles, Monroe, New Orleans, and Shreveport, La.; Little Rock and El Dorado, Ark.; and Beaumont, Tex. The shipments weigh between 50 and 500 pounds. About two shipments a month move to New Orleans.	To Louisiana and Texas Ryder, Johnson, and Cole have been used. To Arkansas shipper has used Gordons. East Texas is used to Shreveport and Beaumont.	Shipper has experienced poor pickup service with Ryder in single-line service to points in Louisiana. It has also experienced difficulties in obtaining pickup service from Johnson.	Herrin. Shipper indicates that Johnson's service has been satisfactory in the several months preceding the hearing.
51. (122) Magnavox Company, Greenville Service Company, a Division of Magnavox Corporation, Atlanta, Ga. Electronic parts and television picture tubes.	From Atlanta shipper has traffic to Houston, Dallas, Fort Worth, and Beaumont, Tex. During April and May of 1966, (its slow season) shipper had a total of 8 shipments weighing collectively 748 pounds to Houston, 41 shipments weighing 354 pounds to Dallas, and 2 shipments weighing 68 pounds to Beaumont.	T.I.M.E. and REA, the former is used only to El Paso, Tex. REA is used to the remainder of the Texas points.	Shipper prefers single-line service because its traffic can be easily damaged and it wants to limit the handling. It is not satisfied with the service rendered by REA.	Baggett. Shipper did not know of any carrier which provids single-line service from Atlanta to the named Texas points. It has made no investigation.
52. (12e) Norwich Pharmacal Company, Norwich, N. Y. Drugs	From shipper's warehouse at Atlanta, Ga. to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Vicksburg, Greenville, Clarksdale, Grenada, and Winona, Miss. Two or three shipments a day move to Jackson with each shipment weighing an average of 350 pounds. It ships about three to five times a week to the remainder of the points with each shipment weighing an average of 350 pounds. About 90 percent of these shipments require protective service from the cold when the temperature is below 25 degrees Fahrenheit.	Deaton, Ryder, and Gordons, REA, and Parker Post handle about 10 percent of shipper's traffic.	Shipper wants protective service in the wintertime. It accordingly is not able to obtain this type of service from the existing carriers. Ryder seldom provides protective service.	Johnson, Bowman, and Jones. Johnson provides protective service to shipper on traffic to Alabama, Florida, and Louisiana, Gordons has provided protective service to the extent shipper uses this carrier.
53. (12b) Deutsch Southern, Inc., Memphis, Tenn. Industrial fastening equipment and fasteners.	From its Atlanta, Ga. distribution center shipper has movements to specified points in Mississippi, Louisiana, and Arkansas. It also ships from Dallas, Tex. to Birmingham, Ala. The shipments are 17L and between 50 and 7L shipments move each week, with 10 moving to Arkansas, 20 to Louisiana, and 30 to Mississippi. Occasionally, shipper's traffic moves from its smaller facility at Memphis, Tenn.	Bowman originates the traffic and interlines at Memphis, Tenn. with Jones to Northern Arkansas, Mercury to Central Arkansas and Red Line to Southern Arkansas. Gordons is used to some Arkansas and Mississippi points. Red Ball interlines at Memphis and delivers to Monroe and Shreveport, La.	Shipper expresses a need for the proposed second-day service to points in the destination territory. It prefers single-line service because assertedly it is faster and it facilitates tracing. Customers have complained about transit times and shipper has had difficulty with tracing.	Johnson, Jones, and Bowman. Shipper has not investigated the availability of single-line services from Atlanta to points in the destination territory. It indicates that it's customers have right to decide the routing.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible] (127) Trout Candy Corporation, Atlanta, Ga. Candy	From Atlanta shipper has movements to Lake Charles, La., two or three times a week, to Baton Rouge, La. and Shreveport, La., daily, and to Monroe, La. twice a week. It ships to Jacksonville, Miss. everyday and to Indianola and Greenwood, Miss. once or twice a week. W.T. Teasley to Arkansas points. It ships daily to Little Rock, several times a week to Fort Smith and Fayetteville, once or twice a week to Batesville, Camden, and Crossett, weekly to Springdale, Batesville, Alexandria, and Russellville, and two or three times a week to Texarkana and El Dorado. It ships to Oklahoma. It ships to Muskogee, Oklahoma City, and Tulsa each two or three times a week, weekly basis to McAlester, Miami, Jane Springs, Stilwell, and Spencer, Oklahoma. It ships weekly east to Joplin, Kennett, Carthage, Neosho, Wanda, and Pineville, twice a week to Springfield, daily to St. Louis, and twice a week to Kansas City. It ships to Garland, Denison, and Orange, Tex. weekly, two or three times a week to Port Arthur and Beaumont, twice a week to Paris, and daily to Dallas, Fort Worth, and Houston, Tex. It has several shipper daily to Chicago, Ill. The average weight of the shipments is [illegible]	Lone Texas provides any [illegible] protection service. Deaton and Gordons have been used to Mississippi, but they have not rendered protection service. Shipper has also used the services of Alterman Miss. Supplies, and Jackson to Baton Rouge, Johnson to Mississippi, and Louisiana points. Jordan to Greenwood, T.I.M.E. to Missouri points, and Miller Number to Chicago	Shipper needs protective service during the summer months to ship 60 to 90 percent of its traffic. It wants consistent second-day service to the farthest points to which it has shipments and next-day service to points nearer Atlanta than El Dorado and Little Rock, Ark. Trucks cannot ship on Thursdays because the dry ice protection will not last throughout the weekend. It does not receive any protective service to Oklahoma, Miss. Supplies, Mississippi, and [illegible], and to points in Arkansas other than Little Rock. Even to Little Rock the only protective service it has is with dry ice	Bowman, Harris, Jones, and Johnson. Shipper indicates that Johnson is the only applicant proposing protective service before the hearing. shipper was not aware that Bowman and Jones could interline to [illegible] Missouri destination points
[illegible] (131) Lindsey Mills Company, Lawrenceville, Ga. Floor covering	From Lawrenceville shipper has movements to specified points in Louisiana, Mississippi, and Texas. In 1965 it shipped 300,000 pounds to points in Louisiana, 180,000 pounds to points in Mississippi, and 2 million pounds to points in Texas. It also has shipments to specified points in Arkansas and Missouri, including Kansas City.	Roadway, Georgia Highway interlining with Mercury, West, East Texas, and Tennessee, Dixie interlining with Red Ball, R interlining with Ryder, and Georgia Highway to Kingsville service. T.I.M.E., ICE, Norris, Alamo Express, and Merchants have delivered its shipments to points in Texas.	Shipper wants 3-day service on LTL movements and 2-day service on TL movements to points in Louisiana, Texas, Arkansas, Mississippi, and Missouri. It maintains a warehouse at Dallas, Tex. But it would terminate the use of this facility if it received the service it desires to Texas points. Shipper introduced two transit time studies. The first covers a few of the shipments delivered between July 30, and October 12, 1965, to points in Texas and to Oklahoma City, Okla. The transit times, which include weekends, range from 3 to 12 days on the 22 shipments listed. The second has with an unknown percentage of the TL shipments delivered to shipper's Dallas warehouse between January 2 and March 3, 1965. Transit times, including weekends on all but one of the 10 shipments listed, range between 3 and 9 days, except for 11-days on one shipment which is not satisfied with the transit times	Johnson, Bowman, and Jones. Shipper will continue to use Georgia Highway to originate its traffic which would be interlined with applicants if the applications are granted. Such appear is limited and in order to avoid competition, shipper wants to limit the originating service to Georgia Highway
[illegible] (134) Cole Steel Equipment Company, Inc., Division of Litton Industries, Atlanta, Ga. Furniture	From Atlanta to points in Mississippi, such as Jackson, Vicksburg, Hattiesburg, Greenwood, Laurel, Biloxi, Columbus, Greenville, Clipper, Indianola, Meridian, and Clarksdale, and to Houston and Dallas, Tex. Also shipper has traffic moving from its Dallas and Houston facilities to its Atlanta facility. Shipments are made to points in Mississippi about twice a week with each shipment weighing approximately 125 pounds or in other words 250 pounds moves to Mississippi each week. About twice a month shipments weighing 900 pounds move to both Dallas and Houston. About once a month shipments are received at Atlanta from both Dallas and Houston weighing about 900 pounds. After January 1, 1967, shipper expected its traffic to Mississippi to increase by two-thirds because shipper's customers will not be able to obtain furniture from shipper's York, Pa. plant.	Ryder has been used to Jackson, Hattiesburg, Vicksburg, Laurel, and Meridian, Dixie to Jackson and Vicksburg, and Gordons, T.I.M.E., Georgia Highway, interlining with Campbell at Birmingham, Ala., and Deaton.	Shipper has received complaints from its dealers about transit times. Dixie informed shipper that its traffic was not desirable. Shipper has experienced difficulty in obtaining pickup service from Ryder and slow delivery service. It indicates that existing carriers, except Johnson, render slow delivery service.	Bowman, Johnson, and Jones. Shipper has used Johnson to Pascagoula, Miss. and describes its service as satisfactory
[illegible] (135) Crawford and Thompson, Inc., Atlanta, Ga. Carpet and padding	From Atlanta to Jackson, Meridian, Columbus, Greenwood; Greenville, and Pascagoula, Miss., and Shreveport, and Baton Rouge, La. During the first 4 months of 1966 shipper had 43 movements weighing a total of 7,775 pounds. Each shipment weighed between 60 and 485 pounds and the average weight was 181 pounds.	Ryder, Cole, Deaton, and East Texas	Shipper has lost sales and several customers because of inadequate transportation. It has experienced slow pickup service with Ryder. Second-morning service to the destination territory is desired.	Bowman, Johnson, and Jones. The services of Bowman and Johnson have been utilized and were found to be satisfactory
[illegible] (137) Cutler Hammer, Inc. Chamblee, Ga. (Atlanta) Electrical control, switch gear equipment and electrical supplies.	From Atlanta to points in Louisiana, and Mississippi, and to Dallas, Tex. The average size of the shipments is between 50 and 20,000 pounds, and the average tonnage a month is about 400,000 pounds Only small shipments move into the Texas area with heavier shipments moving to points in Louisiana and Mississippi.	Ryder has been used to Monroe, Jackson, Shreveport, and Baton Rouge, La. East Texas and Deaton are used to Mississippi and Louisiana. Transcon is used to Dallas.	Shipper often requires high volume, open-top, or container trailers. It indicates generally that it has experienced difficulty with Ryder's pickup service. Transcon is not rendering satisfactory delivery service and Deaton was unable to locate a shipment which was being traced.	Bowman, Johnson, Jones, and Strickland. Shipper has used the services of Johnson and Bowman and describes them as satisfactory. Bowman would be used to Louisiana and Mississippi points. Johnson to Louisiana points, and Jones to Arkansas points.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Applications supported and remarks
59. (143) Columbus Hills Inc., Columbus, Ga. Carpeting and synthetic woolen goods.	From Columbus to points in Louisiana, Texas, and to Memphis, Tenn. During the first 6 months of 1966 shipper had outbound tonnage of 677,348 pounds to Dallas, Tex.; 781,611 pounds to Houston, Tex.; 180,445 pounds to other Texas points; 119,730 pounds to Louisiana points; and 179,369 pounds to Memphis, Tenn. Shipper moves about 30 million pounds a year with better than 10 percent of this total volume going to points in the involved destination territory. The traffic consists of both TL and LTL shipments. Shipper exported to expand its facilities in 1967. To also has movements to Waco, Tyler, Fort Worth, San Antonio, and El Paso, Tex.	To Memphis the services of Georgia Highway Interlining with East Texas have been used. Shipper has used other unspecified carriers.	Shipper has difficulty in obtaining equipment during peak periods. Roadway was not able to supply a sufficient number of vehicles in the last months of 1965 and the early part of 1966. Shipper stated that Johnson refused to handle one t.o.d. shipment but specifics were not given.	Herrin.
60. (145) National Air-line Division of Allied Chemical Corporation, Atlanta, Ga. Dyes, chemicals, and detergents	From Atlanta to points in Louisiana and Texas. Shipper has traffic moving daily to points in these two States. The average shipment weighs 500 pounds and it has shipments weighing up to 5,000 pounds. Shipments move to New Orleans, Baton Rouge, Lock Port, Sedge, Bogalusa, Oak Point, West Monroe, Elizabeth, Springhill, and Bastrop, La. and Houston and Orange, Tex.	To Louisiana shipper has used Johnson, Ryder, Dixie, and East Texas. To Texas it has used East Texas.	Shipper wants direct single-line service. Time in transit is important because shipper's customers maintain limited inventories. Shipper allows up to 4 days for delivery. From Atlanta to points in Louisiana. It has experienced difficulty in obtaining late pickup service from Ryder after this carrier has made its regular pickup.	Herrin. The single-line service rendered by East Texas is described as satisfactory. Herrin's services have not been utilized.
61. (146) The Emmerich Company Atlanta, Ga. Clothing	From Atlanta to Abbeville, Alexandria, Baton Rouge, Bossiers City, Church Point, Crowley, DeRidder, Donaldsonville, Jennings, Lafayette, Lake Charles, Monroe, Morgan City, New Iberia, New Orleans, and Shreveport, La.; Memphis, Tenn., Little Rock, El Dorado, Camden, Texarkana, and Hot Springs, Ark., and Baytown, Beaumont, Dallas, Fort Worth, Galveston, Houston, and Waco, Tex. Shipments weigh between 75 and 200 pounds with the average shipment weighing 125 pounds. Occasionally it will have shipments weighing up to 10,000 pounds. Shipments are made to points throughout Louisiana.	Johnson, Ryder, Dixie, East Texas, and interlining with Mercury. Bus lines have also been used. Johnson is used direct to New Orleans and in interline service to other points.	Shipper wants consistent 2-day service to New Orleans and Memphis. On one shipment to Mansfield, La. originated by Johnson and delivered by Red Ball, the latter carrier did not render a satisfactory transit time.	Herrin and Johnson. Shipper has not investigated the availability of single-line service from Atlanta to the named Texas points. It describes the Mercury-United interline service as reasonably good and indicates that Johnson's service is satisfactory. Shipper was aware that it could originate shipments by Johnson for interline at New Orleans with Herrin.
62. (151) Consolidated Merchandising Corporation, Atlanta, Ga. Sewing machines, sewing machine furniture, and electric irons	From Atlanta to points in Texas, Louisiana, and Arkansas. Shipments to Louisiana are almost on a daily basis. Shipper has between 90 and 100 shipments a month to points in these States and the average weight of each shipment is about 100 pounds. Shipper expects a 3% percent increase annually in its business. It has shipments to points throughout Louisiana (about 45 points) and to points in a portion of Texas ("As far west as Midland and Odessa"). Also shipper has movements to points in Mississippi.	T.I.M.E., East Texas, Johnson, and Transcon. Dixie interlining with Red Ball is used to Shreveport, La.	Shipper prefers single-line service. It has experienced difficulty in obtaining adequate service from the carriers which interline with Johnson at New Orleans, La., and deliver to points beyond. For a 6-month period shipper had difficulty in obtaining pickup service from Ryder, usually involving 3 or more days before pick up. After complaining to the president of Ryder, it received satisfactory service	Herrin, Roadway, and Johnson. Shipper uses the services of Johnson and Roadway. Except for Roadway's service to Texas, shipper describes the service rendered by these two carriers as satisfactory. The service rendered by Johnson to New Orleans is satisfactory but shipper wants "back up" service available. Shipper indicates that five carriers offer single-line service to New Orleans. Even if the applications are granted, shipper would still have to use interline service to some of the named points to which it has traffic moving. Red Ball and Bowman. Shipper is satisfied with Johnson's service to New Orleans. It indicated that existing service to Texas points is reasonably good. Shipper indicates that it is receiving satisfactory service to Shreveport and New Orleans and that it is interested primarily in obtaining single-line service to the smaller Louisiana points. It is aware that Red Ball could serve these points on an interline basis with other carriers from which it is receiving satisfactory service.
63 (150) The Lovable Brassiere Company, Atlanta, Ga. Ladies undergarments	From Atlanta to points in Louisiana, Texas, Arkansas, Memphis, Tennessee, and St. Louis, Mo. Shipper has movements averaging 500 pounds each almost daily to the Dallas, Fort Worth, Houston, Waco, Beaumont, Corpus Christie, Galveston, Laredo, El Paso, and other Texas points. It ships regularly to New Orleans and Shreveport, La. Also it ships regularly to Memphis, Tenn. and St. Louis, Mo. Between 60,000 and 70,000 pounds move weekly to points in Texas and Louisiana.	To Texas, East Texas, Roadway and when a customer requests Ryder. To Louisiana, Johnson is used, and to St. Louis, Gordons and Ryder are used. To points in Louisiana other than New Orleans MEA is used.	Shipper does not like to use Ryder. It has experienced difficulty in delivery and pickup with this carrier. Time in transit is important because often shipments move in connection with advertised sales. Shipper has experienced pickup difficulties with Gordons. As a result, shipper makes limited its use of this carrier. Shipper wants more than one carrier authorized to serve the named points so that it will be in a position to obtain better service. If the authority sought is granted shipper would terminate its use of MEA. It allows 5 or 6 days for delivery to points in Louisiana by MEA. East Texas assertedly has not rendered satisfactory delivery time to named points in Texas.	Herrin, Roadway, and Johnson. Shipper uses the services of Johnson and Roadway. Except for Roadway's service to Texas, shipper describes the service rendered by these two carriers as satisfactory. The service rendered by Johnson to New Orleans is satisfactory but shipper wants "back up" service available. Shipper indicates that five carriers offer single-line service to New Orleans. Even if the applications are granted, shipper would still have to use interline service to some of the named points to which it has traffic moving.
64. (156) Elliot Associates, Atlanta, Ga. Musical instruments	From Atlanta shipper has one LTL shipment a month to Baton Rouge, La. The shipments weigh between 100 and 1,000 pounds each.	Deaton and Dixie originate this traffic.	Shipper wants second or third day, single-line service to Baton Rouge. Its loading facility consists of two doors.	Deaton. Shipper indicates that it has not used direct single-line service to Baton Rouge because it is not aware of any.

Summary of evidence of supporting shippers—Continued

Specific—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services used	Reasons for supporting application	Application supported and remarks
St. Fla: Schlosser Corporation, Village Farm, Ga. Atlanta, Ga.: Chemicals and battery acid, bulk in containers and polyethylene bags.	From Atlanta to Baton Rouge, La. and Dallas, Tex.	Private carriage to Lead in Baton Rouge, Arizona, and San Texas are used to Dallas.	Shipper wants to supplement its private carriage to Baton Rouge during its peak service periods. Regular motor service is preferred because the acid is highly susceptible to damage with excessive handling.	Reason: Shipper indicates that the service of Herrin out San Texas to Dallas is "very satisfactory."
St. Fla.: Buffalo Company, Atlanta, Ga./Air compressors, paint spray equipment, parts, hose and other equipment.	From Atlanta to Jackson and Greenville, Miss., and Birmingham, Ala., with a frequency of inbound 3 to and eight outbound shipments collectively a month with an average weight of 11 pounds.	...ta, Dealt... Ryder, and Morris. Shipper also uses Red Ball trailers to Jackson and Greenville at consignee's request or shipments weighing less than 100 pounds.	Shipper wants ...day service to its destinations and points. It has received complaints from its customers in Mississippi. Customer locate at corner complained about transit times.	Service and: Shipper is satisfied with the existing service from Atlanta to Birmingham. It did not rate... any specific instance when it did not receive a 2 day or the day if requested service on traffic to Jackson or Greenville. Shipper has not used Greenville since it was not aware that Ryder could serve this point.
St. Fla: Swift Manufacturing Company, Columbia, S. C., Textile fabrics.	From Columbia it ships 35,000 pounds a month both to Dallas and Fort Worth, Tex. Shipper has an average of 35 LTL shipments a month to the above points. It plans to construct a new mill and expects the volume of traffic to increase by 50 percent ... 37... Shipper ships less than 2... three shipments a week to Houston, Tex.	Dixie, Pan Amer., and Roadway Buggert Interline with Lee Texas to Dallas, Fort Worth, and some points beyond. Dixie interline with Herrin to Houston, Dixie Interline a joint Pan Amer. to Dallas and Fort Worth.	Shipper wants direct single-line service to Texas and Fort Worth ... as expressed difficulty in obtaining equipment from Yadkin at Columbia and is not satisfied with this arrangement transit time. Shipper thinks the use of Pan American for the Texas traffic ... transit time ... Atlanta. ... Shipper prefers single-line service ... wants to use Ryder service to the destination points. The existing joint ... service presently is not ...	Reason: Shipper is primarily interested ... service to Dallas and Fort Worth and their surrounding areas ... could not ... on Roadway ... Roadway was unable to furnish ... joint ... a direct ... from Worth or Dallas
St. Fla: Kendall Company, Chicago Division, Chicago, Ill., Surgical dressings and related products.	From Shipper's Atlanta, Ga., warehouse to points in Mississippi. Between January and June 1956 it had shipments to Jackson, Greenville, and Greenwood, Miss., and Memphis, Tenn. to Dallas and Houston, Tex. Almost ... of shipments weigh less than ...100 pounds.	Dixie, Ryder, East Texas, and Jordan agree over ... or ... to Mississippi ... East Texas has been used on shipments to ... points.	Proposed ... days for delivery to Mississippi points. Transit time is important since shipper's customers have ... retail storage facilities. It wants single ... Mississippi. Complaints have been received about ... a motor ... regarding transit times.	Reason: Shipper received satisfactory service from Dixie on shipments handled on interline service by Transcon.
St. Fla.: George E. Failing Company, Atlanta, Ga. Drilling supplies.	Inbound shipper receives at Atlanta between 5 and 11 shipments a month from Enid, Okla. and Dallas, and Houston, Tex. with weights varying between 100 and 800 pounds.	Ryder, East Texas, Morris, Overnight, Jordan, Pickett Transfer, Texas, Interstate Express.	Shipper expresses a need for ... service ... shipment ... Houston ... Houston ... Houston

Summary of evidence of supporting shippers—Continued

ILLINOIS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
75. (179) Flam Products, Augusta, Ga. Candy.	From shipper's Atlanta and Augusta, Ga. warehouses to about 7,500 accounts located in Mississippi, Louisiana, Missouri, Oklahoma, Arkansas, Kansas, and Texas. In 1965, shipper moved 500,000 pounds to Mississippi; 250,000 pounds to Louisiana; between 50,000 and 100,000 pounds to Arkansas; 100,000 pounds to Texas; 50,000 pounds to Missouri; and 50,000 lbs. to Oklahoma. Shipper is comprised of four subsidiary companies. The products of all of the subsidiaries are manufactured together.	MLA is used from Atlanta and Augusta. Protective service is rendered by Candell Interlining with Airgoods to some points in Louisiana, Mississippi, and Alabama. Candell, Roadway, Merton-Wilson, Overnight, Johnson, and Bowman are used to originate traffic from Augusta. Candell and Bowman are used to originate most of the traffic at Augusta for interlining at Atlanta.	Shipper requires protective service above 40 degrees Fahrenheit on 80 per cent of its products. Time in transit is important because of the perishable nature of the commodity and also because some of the candy is packaged to be sold for certain holidays. MLA service is not satisfactory because of time in transit; because items in a shipment are delivered separately, and because of damage. MLA does not render protective service. Shipper is not satisfied with the interline service rendered by Airgoods because of transit time and tracing difficulties. During its busy seasons in the last part of January shipper receives about 30 complaints a day regarding delayed deliveries. Shipper has limited floor space.	Bowman, Johnson, and Jones. Jones proposes to serve directly Atlanta but not Augusta. It proposes to render protective service. Shipper is satisfied with the service Candell renders from Augusta to Atlanta. It does not have 24% protective service to Arkansas, Missouri, Oklahoma, and Kansas. During years weather shipper has used dry ice and insulated containers, but with this service it can only ship to direct points in Louisiana and Mississippi and cannot ship after Tuesday since this type of protection lasts only 3 or 4 days. Protective service is required between May and August. Holiday sales (Christmas, Valentine's Day, Easter, and Mother's Day) during which period protective service is not required, represents 40 percent of the sales of two of its four subsidiaries. Shipper's greatest needs were principally for service to Louisiana and Mississippi. Johnson's service to New Orleans is satisfactory. Shipper considered using the service of Kerr Texas Interlining with Bowman in June 1966, the service involves the use of dry ice in insulated trailers. Shipper had not experienced any difficulty with the several shipments moved in this manner. Shipper was not aware that Bowman could originate traffic at Augusta and interline it at Memphis, Tenn., with Jones. However, Bowman does not render LTL protective service. Jones, Johnson, and Bowman. Shipper is satisfied with the service to New Orleans. It could recall only two specific instances of complaints on the first 6.5 months of 1966 from customers located in Mississippi and Louisiana.
77. (171) Gordon Foods, Atlanta. Ga. Items used in vending machines such as pecans, chips, candies, and peanuts.	From Atlanta shipper has customers in Baton Rouge, Lake Charles, Monroe, and Shreveport, La.; and Meridian (one shipment a week), Jackson (three or four shipments a week), Greenville (three shipments a week), Hattiesburg (one shipment every 10 days), Greenwood (once every 2 weeks), Clarksdale (once a week), Indianola (twice a week), Shelby (once a month), Vicksburg, Grenada, and Winona, Miss. (occasionally to these last three points). Shipper's average shipment weighs about 500 pounds. If it received the proposed service, shipper would have customers from Atlanta to specified points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma. It would ship at least once or twice a week to points in these States. Shipper expected its volume of traffic to increase by 25 percent in the year following the hearing.	Johnson, Bowman, Jones, Ryder, and Kerr Texas. Private carriage is used on 75 percent of its traffic. Points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma are served by private carriage with certain carriers handling only that traffic which it is not economically feasible for shipper to handle. Shipper handles one half of its own equipment to Memphis, Tenn. where it is interlining for delivery to points in Louisiana and Mississippi. Dixie, Ryder, and Bowman.	Time in transit is important to shipper because a number of the items it ships have a "life" of 30 days from their date of manufacture. Shipper performs single-line service. It has lost some customers at points in Louisiana located west of New Orleans because of transportation problems beyond New Orleans. Customers have also been lost in Mississippi. Shipper had experienced a 1 week delay in obtaining delivery by a rail carrier to New Iberia, La.	
78. (175) Tip Top Products Company, Omaha, Nebr. Women's hair accessories.	From shipper's Forest Park, Ga. distribution warehouse (Atlanta, Ga.) traffic moves to Jackson, Miss.; and to Shreveport and Monroe, La. To Jackson it has an average shipment weighing between 800 and 1,000 pounds, to Shreveport it has 4 shipments a month with the average shipment weighing between 600 and 1,000 pounds, and to Monroe it has 5 shipments a month with an average weight the same as those described above. Shipper is interested in service generally to points in Mississippi and Louisiana, with the exception of New Orleans. Representative points are: Columbus, Greenwood, Hattiesburg, Meridian, Vicksburg, Greenville, Tallulah, and Ruston, Miss., and Baton Rouge and Lake Charles, La. The shipper's most serious competitor is the same one which complained about Ryder's service.	Shipper receives some complaints about slow transit times with the existing service. One customer in Jackson has requested that Ryder not be used and shipper indicates that Ryder does not render a reliable pickup service. With the exception of one of shipper's Jackson customers, consignees have been satisfied with Dixie's service. The most customers complained about transit time. Bowman's service has been satisfactory except for one complaint from a Jackson customer, the same one which complained about Ryder's service.	Bowman, Jones, and Johnson. Shipper uses Bowman and Johnson with satisfaction. It did not introduce any bills of lading to show slow pickup service on the part of Ryder. The record indicates that shipper showed at the hearing demonstrated that Ryder made a pickup on the proper day. Service to New Orleans is satisfactory. Shipper would have no objection to using the single-line service to Shreveport.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (1[illegible]), Gale House of Music of Savannah, Ga. Savannah, Ga. Pianos and organs	Inbound to Savannah shipper has traffic moving from Greenwood, Miss., and Fayetteville, and Conway, Ark. It receives between [illegible] and 12 LTL shipments a month from Greenwood and Conway and about 5 a month from Fayetteville. Shipper expected an increase in its business of 20 percent in the year after the hearing.	Transcon, Gordons, Harper, Taylor, and Bowman.	Shipper wants direct single-line service by Bowman from Greenwood. It expresses a need for second-day delivery from Greenwood and third-day delivery from Fayetteville and Conway. Time in transit is important because shipper carries an limited inventory. Excessive handling can result in shipper having to return the pianos. Since shipper does not have a loading dock it requires that the dock it requires that the delivering carrier have a hydraulic tailgate on its equipment. A transit time study on six shipments from Greenwood to Savannah was introduced. Gordons originated three shipments and Taylor originated the remaining three. Harper was the delivering carrier in all of the shipments. Transcon was the bridge carrier on the shipments originated by Taylor. Including weekends the transit times were between 4 days and 8 days.	Bowman and Jones. Shipper has used the services of Bowman as a delivery carrier. Lines would have to interline at Atlanta, Ga. for delivery to Savannah by the connecting carrier.
[illegible] (1[illegible]), Maryland Baking Company, a division of the Maryland Cup Company, Atlanta, Ga. Cones, paper products and plastics	From Atlanta to points in Mississippi in LTL quantities. Shipments weigh from 500 pounds to 5,000 pounds. The average weight is usually 500 pounds. Representative points to which shipper had traffic moving in 5/66, are Batesville (2 shipments), Clarksdale (5 shipments), Columbus (5 shipments), Greenwood (12 shipments), Hattiesburg (5 shipments), Jackson (15 shipments), Laurel (6 shipments), Meridian (11), and Winona (1). Shipper indicates that it has movements to all points in Mississippi.	Bowman, Johnson, [illegible]gett, Deaton, Gordons, Ryder, and Dixie. Private carriage is used on shipper's cones to Mississippi.	Transit time is important. Shipper indicates that unless it is able to obtain better service from Atlanta to Mississippi it will have to set up distribution warehouses at points in Mississippi. It expresses a need for the proposed 2- or 3-day service. Many complaints have been received with respect to existing service.	Jones, Johnson, and Bowman. Shipper has used the services of Johnson and Bowman and found them satisfactory.
[illegible] (183), Bostitch-Atlanta Inc., Atlanta, Ga. Industrial fastening equipment and fasteners	From Atlanta to points in Louisiana, Mississippi, and Arkansas. Shipper moves about 10,000 pounds a week to points served by Red Ball in these three destination States. The shipments weigh between 50 and 4,000 pounds. Shipper expects its business to increase 10 percent annually. Between 7/7/65 and 5/26/66 it had shipments from Atlanta to Baton Rouge, Winnsboro, Shreveport, Ponchatoula, Alexandria, Bossiere City, Monroe, Crowley, Lake Charles, Natchitoches, Fort Polk, Hammond, Bastrop, Morgan City, Lafayette, Jamesville, and Alsatia, La.; Pine Bluff (two shipments during this period), and Little Rock (one shipment during this period), Vicksburg, Natchez, and Cedars, Miss.	Ryder, Johnson, Bowman, Dixie, Cole, Deaton, T.I.M.E., REA, Transcon, East Texas, Georgia Highway, and Red Ball.	Shipper expresses a need for the proposed overnight service to Jackson, Miss., and second-day service to the majority of Louisiana points. It prefers single-line service because it facilitates tracing and avoids the delays inherent in interchanging. A transit time study was introduced covering 131 shipments which moved between 7/7/65 and 5/26/66. This traffic moved to points in Arkansas, Louisiana, Mississippi, and Texas. It was handled in interline service with Dixie and Bowman originating the traffic and Red Ball delivering it. Shipper was not sure whether it represented all of the pertinent traffic interlined with Red Ball during this period. With Dixie the interline occurred at Jackson, Miss., and with Bowman the interline took place at Memphis, Tenn. Including weekends, the majority of the shipments to Baton Rouge were delivered in 5 or less days; to Shreveport, a majority were delivered in 5 or less days; to Monroe and Alexandria one half of the shipments were delivered in 5 or 4 days; to other Mississippi points the majority of shipments were delivered in 5 or 6 days; and to Little Rock, a shipment was delivered in 6 days. The majority of all the shipments listed were delivered in 5 days or less but some were not delivered for up to 9, 10, and 11 days.	Red Ball.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported at: remarks
77. (LM) Kaufm Carpet tion a Divisio of Inter Textile Corporation, Dalton, Ga (Atlanta in Finishing raw cloth	From Atlanta to Alexandria, Baton Rouge, Shreveport, Monroe, Clinton, Vidal, Lake Providence, Ruston, Tyaskana, Springhill, Summit, Natchitoches, and Haynesville, La. The average weight of the shipments is 436 pounds. Between 50,000 and 150,000 pounds moves from shipper's plant each month. Between 7/1/65 and 8/1/66, shipper had about 200 movements to specified points in Louisiana.	Central, T. & N. O., Johnson, Certain, East Texas, Rock-way, and Red Ball. Shipper is used to New Orleans. Central originates shipments and interlines with Red Ball at Jackson, Miss. Red Ball is used as a delivering carrier.	Shipper wants faster single-line service to points in Louisiana and Miss. It has received complaints on the transit times on shipments to Louisiana. Second- or third-morning service to points in Louisiana would satisfy shipper's needs. It prefers single-line service. Shipper introduced a transit time study of traffic handled to the destination territory mostly of interline service by Red Ball and Central or Illinois. The study covers shipments which moved between 7/1/65 and 8/1/65. Shipper was not certain that all of the particular shipments handled by Red Ball were included, including weekends, a majority of the shipments handled by Central or Illinois interline with Red Ball were delivered in 6 or less days. One half of the shipments handled by Illinois interline with Red Ball were delivered in 6 or less days. Shipper indicated that its study showed that it is receiving an average transit time from the originating carriers of 7.01 days while it was receiving an average transit time of 7.1 days from the delivering carrier, Red Ball.	Red Ball and Central (Illinois) is satisfactory with the service rendered by Red Ball and Central. It was not aware of a single-line carrier from Atlanta to Shreveport.
78. (LM) David Rothschild Company, Dalton, Ga. Cotton piece goods and synthetic woven fabrics	From Columbus to points in Louisiana, Arkansas, Texas, and to Memphis. The shipper has weekly movements to New Orleans, Shreveport, Baton Rouge, and Monroe, La., Memphis, Texas, Little Rock, Van Buren, Benton, Fort Smith, El Dorado, and Pine Bluff, Ark. Shipments weigh between 90 and 1,000 pounds. Movements and Louisiana points other than those described above are also served by shipper. To New Orleans shipper has between 1 and 3 movements a week weighing a total of 500 pounds, to Shreveport, Monroe, and Baton Route it has 1 shipment a week to each point with the shipments weighing between 90 and 900 pounds; to Memphis it has about 25 shipments a week with each shipment weighing about 500 pounds, to Little Rock and Van Buren, 1 shipment a week to each point with each weighing up to 500 pounds, to Benton, shipment a week weighing 500 pounds, to Fort Smith 15 shipments a week each weighing between 900 and 1,500 pounds and to Pine Bluff, shipment a week to each of its 2 or 3 customers located there with each shipment weighing between 90 and 1,500 pounds.	Ryder, Lisle, and Roadway. Ryder is used to Shreveport and is interline to points in Arkansas. Lisle is used to New Orleans, Monroe, and Baton Rouge.	Transit time is important to shipper because its customers do not maintain inventories and can operate on hand to mouth basis. Shipper is interested in new forms of service. Overnight service to New Orleans, Baton Rouge, Shreveport, Memphis, and satisfactory morning service to outlying points in Louisiana and to Arkansas. Shipper allows 3 days for deliver to points in the destination territory. It has received complaints about transit time to New Orleans. Shipper was not satisfied with the service rendered by Ryder to Memphis and its replacement, Ryder essentially is not performing satisfactorily. Lisle's service to New Orleans is also described as unsatisfactory. Shipper refuses to use Johnson because this carrier damaged shipper's facility and accordingly refused to pay the full amount of the claim.	Memphis
79. (LM) Crystal Springs Blanketry, Inc., Chickamauga, Ga. Cotton piece goods	From Chickamauga to Dallas, Houston, and Waxahachie, Tex., Little Rock, Ark., Kansas City, and Carthage, Mo., and Columbus, Meridian, Hattiesburg, Jackson, and Pass Christian, Miss. Shipper's movements are principally LTL. Between 2/1 66 and 7/1/66 shipper had a total of 181 shipments moving to these points.	Roadway, Service Trans, AEA, Denver, GT & GMC, Ryder, Haggett, and customers equipment.	Shipper has had difficulty in obtaining pickup service where it requests it. Shipper allows 6 days for delivery to points in Texas; 3 days are allowed for delivery to Mississippi, and 10 days overnight service; 3 or 4 days are allowed to Louisiana and it wants second-morning service. 7 to 10 days are allowed to Kansas and Missouri and it wants third-morning service, and 4 days are allowed for Arkansas and it wants overnight service. Shipper stopped using Ryder to Mississippi because 2 months before the hearing Ryder intimated that it did not want to handle this traffic. Roadway is not used as a delivering carrier because about 5 years before the hearing commissioned origin carrier informed shipper that Roadway would not accept interlined shipments. Shipper has received complaints regarding the existing service. It has experienced problems in obtaining pickup service from GT & GMC.	Roadway. Shipper has satisfactorily used Roadway services. It is alleged that Roadway can serve Chickamauga under its existing authority to serve points within 25 miles of Chattanooga, Tenn.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible] (196) Research Citrus Products Company, Doraville, Ga.; Atlanta, Ga.; Preparations and beverages syrup in glass containers	From Doraville about 16 LTL shipments a month move to Louisiana points such as Homer, Monroe, Ruston, and Shreveport. Shipper also has one TL movement a month From Doraville to its Dallas Tex., warehouse. It also ships to Little Rock, Pottsgrove, and El Dorado, Ark., Kansas City, Pittsburgh, and Wichita, Kans., Clarksdale, Greenville, Indianola, and Shelby, Miss., St. Louis, Mo., McAlister, Oklahoma City and Tulsa, Okla., and Dallas and Grand Prairie, Tex.	To Louisiana points shipper uses East Texas, Gardner, and Dixie interlining with Red Ball. On shipments to Dallas shipper stopped using East Texas and began using Roadway	Transit time is important because shipper's customers do not order until they have an immediate need for its product. To Louisiana points, shipper wants 2-day service. It wants 2-day service to Arkansas points. Single-line service is performed. Shipper is not satisfied with the transit time rendered by East Texas to Louisiana points. It appreciates a need for Jones proposed 2-day service to El Dorado so as to obviate the need for serving this point from Dallas. About 50 percent of shipper's traffic moves in glass containers and requires protective service in freezing weather	Boston, Red Ball, and Jones.
[illegible] (199) Murray Company, Forest Park, Atlanta, Ga.; Cotton gin machinery and parts thereof	Inbound shipments are received at Forest Park from Dallas, Tex. Outbound shipments move from Forest Park to shipper's plant at Dallas. Shipper has about 15 movements a month From Dallas during the cotton harvest and ginning season which lasts for about 45 days between August and October. The shipments weigh between 300 and 2,000 pounds each. It has four shipments a year to Dallas with an average weight of 1,000 pounds. Shipper is primarily interested in the eastbound traffic	United Interlining with Mercury is used on outbound traffic to Dallas. These same carriers handle shipper's inbound traffic. East Texas, Roadway and Gardner have handled some of shipper's traffic. Georgia Highway sometimes delivers shipments to Atlanta interlining with United.	Transit time is important because shipper's customers are not able to process cotton and therefore lose business while their gins are not operational. Shipper expresses a need for the proposed second morning service from Dallas to Atlanta. Shipper introduced a transit time study of 29 shipments delivered between 7/13/65 and 10/1/65. The shipments moved from Dallas to Atlanta and were handled by Mercury interlining at Birmingham, Ala., with United. The study shows that, including weekends, 19 of the shipments were delivered in 3 or less days (6 were delivered in 2 days). The remaining nine were delivered, again including weekends, in 5 or 6 days.	Strickland. Shipper knows of six carriers which render single-line service between Atlanta and Dallas but it believes that some of them deliver on Saturdays. Shipper is open on Saturdays. Even if the application is granted shipper would, to a degree, divide the traffic among the authorized carriers.
62. (290) Bowman Products Division, Stone Mountain, Ga. Automotive replacement supplies	From Stone Mountain, which is located 15 miles east of Atlanta, Ga. to Jackson, Greenwood, and Greenville, Miss. Shipper has 60 movements a month weighing between 50 and 300 pounds each, to these three Mississippi points.	Boston, Gardner, Ryder, Dale, and Dixie. Shipper uses Dixie as a delivery carrier on some shipments to points in Mississippi.	Shipper wants overnight service to the three Mississippi points. It is not satisfied with the existing service. Shipper introduced a transit study of shipments on which it had received complaints. The shipments moved between 2/18/66 and 6/13/66. Four of the shipments moved to Greenwood and four to Jackson. Boston handled six of the shipments rendering transit times of 4, 5, and 6 days. Gardner handled the two remaining shipments rendering 5- and 6-day service. The delivery dates were obtained from the carrier handling the traffic.	Strickland. Shipper supports Strickland for authority from Atlanta, Ga., and LT from Stone Mountain is not located in the commercial zone of Atlanta it would not support this application.
63. (292) Bowman Electric Motors Company, Atlanta, Ga. Electric motors	From shipper's Atlanta warehouse between 1/1/66 and 6/23/66 it had 11 shipments weighing a total of 6,000 pounds to Houston, Tex., and 1 shipment weighing 174 pounds to Fort Worth, Tex. From its Houston warehouse shipper had 121 movements weighing a total of 88,061 pounds to points in Georgia, Florida, and North and South Carolina during this same period. The shipments from Houston were interlined at Atlanta. Additionally, during this period 22 shipments weighing a total of 11,918 pounds moved from Houston to points served by Baggett. Shipments weigh between a minimum and 9,000 pounds. Shipper's traffic also moves from its warehouses to distributors located at Birmingham, Bothan, and Gadsden, Ala., Rome and Columbus, Ga., and Chattanooga, Tenn. Only about 10 percent of the traffic between Houston and Atlanta moves between the warehouses.	From Atlanta to Houston shipper has used Ryder, Roadway, Morvin, East Texas, Gardner, and Mercury. United originates traffic to Houston and interlines with Mercury at Birmingham. These same carriers are used in the reverse direction from Houston to Atlanta.	Shipper wants direct single-line service to and from Houston and Fort Worth, Tex. and Atlanta, Ga. Shipper indicates that the interlining service of Mercury and United has not been satisfactory and that Gardner's service is not satisfactory. East Texas is not allowed by shipper for an unspecified reason to serve the Houston warehouse. Ryder's delivery time has been satisfactory. Shipper received customer complaints regarding delivery time on 80 percent of the aforementioned shipments	Support. Shipper is aware that Gardner has direct single-line service from Fort Worth to Atlanta. It has single-line service between Atlanta and Houston from Roadway, Ryder, Morvin, East Texas, and Transcon. Shipper has used Baggett's service and describes it as satisfactory.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
84. (213) Kraft Foods Division, National Dairy Products Corporation, Garland, Tex. Foodstuffs and animal and poultry feed	During the first 6 months of 1966 shipper had movements (1) from Decatur, Ga. (Atlanta), to Baton Rouge, New Orleans, and Lafayette, La., Columbus, Greenville, Greenwood, Gattlesburg, Jackson, Laurel, Pascagoula, Vicksburg, and Indianola, Miss., Memphis, Tenn., Garland, Tex., and Springfield, Mo.; (2) from Lakeland, Fla., to Houston and Garland, Tex., and to Springfield, Mo.; (3) from Garland, Tex. to Birmingham, Mobile, and Montgomery, Ala., Decatur and Douglasville, Ga., and Miami, Fla.; and (4) from Springfield, Charlotte, Goldsboro, and Shelby, N.C., Kissimmee, Jacksonville, and Miami, Fla., and Knoxville and Nashville, Tenn. Shipments move primarily in volume or TL lots in straight or mixed loads either direct to one consignee or to two or more consignees.	From Decatur shipper uses private carriage, Refrigerated Transport Eagle interlining with Colonial, Tompkins Ryder, Railroad, TOTC, and Johnson. From Lakeland shipper uses Refrigerated Transport, Wilson Bros., Commercial, Alterman, and Railroad. From Garland shipper uses Marrery, private carriage, Railroad, Jones, Bowman, Cordona, and Morvin. From Springfield shipper uses private carriage, Railroad, Jones, Campbell, Wilson Bros., Mallowy, and Western Gillette.	Shipper requires protective service from both heat and cold on most of its products. It indicates that trailers equipped with mechanical refrigeration are required for a portion of every shipment moving from Atlanta. Assertedly existing refrigerated service carriers do not have sufficient equipment to meet shipper's needs from Atlanta. Shipper wants direct moving service to points within 400 miles of its facilities.	Bowman, Morvin, and Jones. Ryder has established a special products division with mechanically refrigerated equipment. Shipper was generally satisfied with the interline service of Jones and Bowman from Garland. However, Bowman discontinued using mechanical refrigerated equipment. If its application is granted Bowman would reinstitute refrigerated service
85. (214) Augusta, Ga. (247) John Sexton & Co., Chicago, Ill. Canned foodstuffs, cleaning compounds, and paper products	Non Shipper under Missouri heading.			
	Ships from Atlanta warehouse to points in Mississippi. Most traffic moves during months of August, September, and October. Institutional sales.	Dixie, Braswell, G. T.A., Johnson, Sexton, Bowman, Viking, Ryder, West Bros., United Robinson.—All shipments two-line service except to Jackson and Greenville, Miss., where Dixie used direct.	Poor transit times, 5 days delays to one customer when number of a chain organization can jeopardize the entire account. Small hotels and schools maintain small inventories. Problems with tracing.	Bowman, Johnson, and Jones.
87. (220) Continental Can Company, Inc., Atlanta, Ga. Polyethylene film	From shipper's Columbus, Ga. plant to its Rossmont facility it makes weekly shipments weighing between 2,000 pounds and TL lots. Also shipper has movements from Columbus to points in Texas, including Houston, Dallas, and Fort Worth, Tex. and to points in Louisiana. Shipper also has movements from Rossmont to Columbus.	Cole, Tidle, and Airlines. Morvin—interline service.	Desires second-morning delivery. Wants Morvin direct-line service. Transit times range from 2 to 8 days with most shipments in transit 4 to 6 days.	Morvin.
88. (223). Coopers, Inc. and its wholly owned subsidiaries. Jockey Manufacturer, Kenosha, Wis. Men's wearing apparel	From shipper's Cedartown, Ga. warehouse during the month of August, 1966 shipper had LTL movements to numerous specified points in Texas, Missouri, Oklahoma, Louisiana, Arkansas, Mississippi, and Kansas.	Bowman originates the traffic and interlines at Atlanta, Ga. or Memphis, Tenn. with T.I.M.E., Campbell, Braswell, Tramscon, Groves, Red Ball, East Texas, Western Gillette, and West. REA and UPS also used.	Delays at Atlanta and Memphis gateways; desires third-morning delivery at Dallas for interchange to Los Angeles, Calif. Shipper desires second-day service to Louisiana, Arkansas, and Mississippi, and 4-day service to the Carolinas. Transit time study indicates service to Atlanta takes 1 day but total transit time to points in Kansas takes as much as 12 days, with an average time to Kansas points of 6 to 7 days.	Bowman and Johnson. Although shipper wants to substitute proposed joint-service for existing joint-service, it is believed that shipper will be able to reach more points because of the proposed gateways.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper (warehouse and commodities)	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] Boyle, [illegible] House- [illegible] products, [illegible] [illegible] [illegible] at Rome [illegible] its [illegible] [illegible] at Atlanta, [illegible] [illegible] Bass, [illegible] [illegible], ae [illegible] [illegible] [illegible]

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
97. (579) Progress Manufacturing Co., Atlanta, Ga. Lighting fixtures	From Atlanta, Ga., to Baton Rouge, and Monroe, La. Approximately 200 pounds moves to Baton Rouge about twice a week, and same amount to Monroe once a week.	Ryder, Baggett, Jack Cole, Johnson.	Joint-line service inadequate. Wants faster transit service.	Deaton.
98. (620) Stevaco, Atlanta, Ga. Electric motors and component parts	From Atlanta, Ga., to Shreveport and Baton Rouge, La. Approximately 50,000 pounds moves during summer months.	Johnson and Sais	Prefers single-line service	Deaton.
99. (621) Miller Falls Company, Atlanta, Ga. Hand and electric tools	From Atlanta, Ga., to Baton Rouge, Shreveport, and Monroe, La., and Dallas, Tex. Three shipments weekly ranging between 100 and 300 pounds.	East Texas, Jack Cole	Prefers single-line service	Deaton.
100 (622) Guardian Chemical Co., Atlanta, Ga. Concrete surface curing compound	From Atlanta, Ga., to Houston and Dallas, Tex. Truckload shipments weighing about 40,000 pounds move every 6 to 8 weeks.	Mercury, Alabama-Georgia Express	Prefers single-line service, and second-morning service	Deaton.
101 (636) Trend Mills, Inc., Rome, Ga. Carpets	From Rome, Ga., to points in Texas. Approximately 2 million pounds moved during a 6 month period in 1968.	Baggett, Georgia Highway, B.C.A., Roadway	Joint-line service inadequate. Wants third-day service	Baggett.
102. (671) Tom Huston Peanut Co., Columbus Ga. Peanuts, candies and baking goods	From Columbus, Ga., to Houston, Fort Worth, Dallas, and Beaumont, Tex. Monthly shipments of 24,363 pounds, 45 pounds, 12,691 pounds, and 1,850 pounds to the respective points.	Jack Cole, Sixie, Marvin, Red Ball, and Ryder	Needs faster service. Problems with delays, and inconsistent service.	Baggett.
103. (672) Lumpus Cotton Gin, Co. Columbus, Ga. Cotton and textile machinery and related parts.	From Columbus, Ga., to Dallas, Tex. About 38,170 pounds moved during a 9-month period in 1968.	Baggett, East Texas, Jack Cole, Marvin, Roadway.	Desires single-line service. Needs faster service.	Baggett.
104. (687) Atlanta, Ga.	See shipper under Tex. heading			
105. (725) Atlanta, Ga.	See shipper under Kans. heading			
106. (786) Hedlow Laboratories Inc., Milledgeville, Ga. Intravenous solutions	From Milledgeville to Little Rock, Ark., Kansas City, Mo., and Dallas and Houston, Tex. During 1968 Hedlow shipped its commodities to the above points in shipments weighing from 5 to 42,500 pounds. It made 27 shipments to Little Rock in 1968, 36 to Kansas City; 62 to Dallas; and 27 to Houston.	Tamiami, ETNF, Brown, Gordons, Overnight, Mercury, Transcon, T.I.M.E., GWT, CDFS, REA, WW, UPS, YELL, MDP, T & P, Marvin, Ryder, Roadway, and Bowman.	Too much damage with present service. Wants faster service. Average transit time 6 days, including weekends. Allows 1 week lead time to Little Rock. Wants 2-day service to Little Rock. Allows about 10 days lead time to Kansas City, and Dallas and wants 2- or 3-day service. Some products require refrigeration.	Bowman. Of 22 Arkansas-bound shipments 13 were damaged or short. Of 36 to Kansas City, 13 were damaged or short. Of 62 to Dallas 22 were short or damaged. Of 27 to Houston 17 were damaged or short.
107 (865) Marks Handkerchief Manufacturing Company, Augusta, Ga. Mens' handkerchiefs	From Augusta, to points in Arkansas, Mississippi, Louisiana, Texas, and Missouri. During a 5 month period shipper had 23 shipments to points in the above States. Average weight was 120 pounds (LTL). Shipper states that this represents about 50 percent of its shipments during this period.	Bowman, Brown, Yellow, and Roadway	Wants faster service to a most competition.	never used the services of Johnson. Shipper has services of many carriers and it provides no details of late or delayed shipments.
108. (873) Southern Press and Filter Media Company, Augusta, Ga. Filters.	From Augusta to Houston, Beaumont, Baytown, and Dallas, Tex.; Baton Rouge, La., Pine Bluff and West Memphis Ark., and Jackson, Miss., from 12/5/66 to 1/30/67 shipper had 67 shipments to above points. Average weight was about 150 pounds.	Brown, Bowman, Roadway, P.P. REA, Yellow, Watson, Ryder.	Wants faster single-line service to eliminate tracing problems. Wants 3-day service to Texas, Arkansas, and Kansas City, and 2-day service to points in Louisiana and Mississippi.	Bowman, Johnson, Watson-Wilson gives good service to Kansas City. Several carriers can interline at Atlanta.
109. (884) Atlanta, College Park, and Tucker, Ga.	See shipper under Alabama heading.			
110. (888) Colgate-Palmolive Company, Inc., New York, N.Y. Cleaning compounds.	From shipper's La Grange, Ga. facility to points in Mississippi and Louisiana. Will ship about 10,000,000 pounds a year from new plant expected to open in 1968.	None	Wants overnight service.	Bowman. Roadway can serve two or three points in single-line service. Georgia Highway can also serve several points. Several other carriers can perform single-line service and they have been untried because plant is not yet complete.

Summary of evidence of supporting shippers--Continued

GEORGIA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
... 97, Jyne ...ducts Co ... Inc., Augusta, Ga ...ducing tools and tape ... 9,91 Atlanta, Ga	From Augusta to points in Louisiana, Mississippi, Missouri, Arkansas, and Texas. During a 3 and one half month period of study had almost 100 shipments to points in the involved territory. All shipments are LTL weighing about 250 pounds. See shipper under Maryland heading.	Bowman, Johnson, Roadway, Watson, Muskabee, Herrin and Red Ba...	Wants faster service. Allows a ... 5 days lead time to Texas, Louisiana, and Mississippi. Wants overnight service to Mississippi and Louisiana and 2-day service to Texas.	Bowman and Johnson: There are several interline connections that shipper has not tried. Shipper has no specific complaints other than poor transit time by Roadway
... 511: The Arrow Company, ... P. T. ...thing	From shipper's Atlanta, Ga. fa...ty to points in Mississippi, Arkansas, Louisiana, and Texas. From Lake ...uage, Ark., to Atlanta, Ga., receives 50C pounds a week--this is about two shipments. Shipper moved from Atlanta during May 1964, 2,831 shipments by motor carrier. Average shipment weighs 200 pounds.	Red Ba..., Pyker, Roadway, CTNT, Colo. RLA, and C F I	Wants faster service. Is satisfied with existing joint line service	Red Ball: Shipper has no specific complaints. Shipper has available to it single-line service to many points involved herein
... 92: Lexington Bakery ... (Lexington, ... Tennessee	From Clayton, Ga., to Lavre, and Jackson, Miss., Kansas City, Mo., and points in Louisiana, Texas and Arkansas. From 10/10 to 12/30/64 (heavy season) 48 shipments to the involved territory weight ranged from minimum to TL (40,000 pounds). Average 2,900 pounds	Georgia Highway Express, Bowman, Transcon, T. I. & E., Hoover, Atlas, Tomlinson, Strickland, Ryder, Gordons, Watson.	Wants single-line service. Too many problems with joint line service. Slow deliveries.	Bowman: No specific proof of delayed deliveries or poor service. Shipper does not always choose the carrier.

KANSAS

... 26: Russell ...ower Candles, Inc., ... Springs, Kans. Candles	From Kansas City and Loring, Kans. to Birmingham, Ala. and Atlanta, Ga. At least one TL shipment moves each week. During the period of a year 2 million pounds have moved from Loring to shipper's distribution warehouse at Atlanta. This is both TL and LTL traffic. The LTL shipments are between 500 and 4,000 pounds. Annually, 40,000 pounds moves from Loring to Birmingham	Campbell, Watson-Wilson and private carriers	Shipper must either use private carriage to move its traffic from Loring (located 90 miles from Kansas City), or use a local carrier. It wants second-morning delivery from Loring to Atlanta, and from its shipping station in Kansas City to Atlanta. Jones has authority to serve Loring, and if its application is granted it would be able to serve Atlanta in single-line service. Bowman would be used from Kansas City.	Bowman and Jones: Shipper requires protective service down the temperature is above 90 for one fahrenheit. Watson-Wilson's services are described as good and bad. Shipper has not always been able to secure equipment from this carrier. Campbell has been used mostly on LTL movements.
... 452: Sears Stores	See shipper under Texas heading.			
... 495: Topeka Motor Freight, Topeka, Kans. General commodities	From Kansas City, Kans., to Atlanta, Ga. and Birmingham, Ala. Five shipments weighing about 2,000 pounds a day.	T. I. & E., Gordons, Thomason, Watson-Wilson, Campbell	Needs faster service. Wants 2-day service.	Jones.
... (700) National Packing Co., Kansas City, Kans. Meats	From Kansas City to Atlanta, Ga. and Birmingham, Ala. Monthly shipments to Atlanta ranging between 35,000 pounds and 40,000 pounds TL and LTL shipments	Bilyeu, Refrigerated, Hirschbach, Jones, Bowman.	Difficulty in obtaining refrigerated equipment	Jones, Red Ball: Shipper states that it has had no real problems with the joint-line service of Jones and Bowman. Refrigerated trailers equipped with meat rails are required.
... (701) Ehling Lace Co., Kansas City, Kans. Tile	From Florence, Ala. to Kansas City. Between four and five TL monthly	EVANC, Jones	Needs faster service because of lack of storage space	Jones: Specific volume not given.
... (702) Midwest Cold Storage & Ice Corp. Kansas City, Kans. Prepared frozen foods	From Kansas City to Atlanta, Ga., and Birmingham, Ala., and return. About 800,000 pounds moves annually	Campbell	Only LTL service available. Requires perishables to be packed in dry ice which is unsatisfactory to shipper. Needs a scheduled serv...	Jones: Protestants have not shown that they are interested in the traffic

Summary of evidence of supporting shippers—Continued

KANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
7. (705) C.F. Adler Co., Kansas City, Kans. Cartings.	From Kansas City to Atlanta, Ga. Monthly shipments weigh about 3,000 pounds.	Jones, Bowman, Watson-Wilson, T.I.M.E., Transcon, Gordons.	Joint-line service inadequate. Wants 2-day sing.e-line service.	Bowman, Jones.
8. (712) Sunflower Packing Company, Wichita, Kans. Beef and beef byproducts.	Wichita to Atlanta, Ga. Two to three TL shipments a week. Each TL weighs about 35,000 pounds.	Silver, from Wichita interchanging with other carriers to Atlanta, Ga.	Wants direct single-line service to Atlanta.	Jones. Never tried service of Frozen Food Express which can serve Atlanta through Emporia, Kans. Caravan. Refrigerated equipment is required.
9. (716) Bennett Stripping Machine Company, Inc., Topeka, Kans. Binding machinery.	From Topeka to Tennessee (25 shipments a month), Birmingham, Ala. (10 shipments a month), Georgia (15 shipments a month), and Florida (8 shipments a month). Shipper also anticipates irregular shipments to North and South Carolina. A shipment can weigh up to 6,500 pounds.	Yellow Transit, Watson-Wilson. Interlining with other unnamed carriers.	Joint-line service too slow. Damage to machines more likely in joint-line service. Wants 5-day service to Northern Florida.	Bowman. Yellow Transit offers single-line service to Atlanta, Ga. About eight shipments a month move to Atlanta
10. (717) Henry Manufacturing Company, Inc., Topeka, Kans. Excavating and earth moving machinery and parts thereof.	From Topeka to points in the Southeast. Shipments move from Topeka to North Carolina, South Carolina, Georgia, Richmond, Va., Mobile, Ala., and Tennessee. Shipper transports 150,000 to 200,000 pounds a year to the Southeast. Most shipments are LTL and weigh between 200 and 1,000 pounds.	Capitol, Yellow Transit, Handway, Campbell.	Single-line service would cause less damage to machines. Present service too slow.	Bowman.
11. (726) Metal-Fab, Inc., Wichita, Kans. Pipe and ducts.	From Wichita to Atlanta, Ga., and through Atlanta to points in Florida. During 1966, 130,000 pounds moved to Atlanta and 40,000 pounds moved to Florida. Truckload quantities weigh 12,000 pounds. Shipper estimates that it will have two TL truckloads a month to Atlanta.	Transcon, Yellow Transit, and Watson-Wilson.	Desires faster service to Atlanta. Transcon's equipment arrives at Wichita between 7:30 and 8:00 p.m. and shipper's employees must be paid overtime to load the trailer. Shipper wants morning pick ups. Wants 2-day service to Atlanta.	Jones. Transcon can perform single-line service to Atlanta.
12. (728) Russell Stover Candies, Inc., Bonner Springs, Kans. Chocolate candies	From Kansas City and Loring, Kans. to Atlanta, Ga., Greenville, Miss., and from shipper's Atlanta warehouse to Birmingham, Ala. In 1966, 2,450,000 pounds were shipped to Atlanta; more than one-half was transported by private carriage. From Kansas to Greenville is transported 500 pounds a week, and from Atlanta to Birmingham it ships at least 1,000 pounds a week.	From Kansas City it uses Campbell, Jones and Watson-Wilson. From Atlanta it uses Johnson, United, Baggett, Daisy, Bowman and G.F.A.	Wants refrigerated equipment in single-line service so as to avoid possible damage to its commodities when transferred to joint-line carriers.	Red Ball. Packs chocolates in cartons with dry ice. Requires temperature controlled vehicles. This shipper also supports Bowman and Jones. See 1. (29) under Kansas heading
13. (729) Lee Refrigeration Inc., Kansas City, Kans. Refrigerators, freezers and hot food warmers	Kansas City to points in Florida. Shipper moves about 500,000 pounds a year.	Thunderbunk and Handway interlining with Ryder and Control. Also uses the Freight Forwarders, viz., Aero Fast Freight and Universal Carloading.	Present service too slow. Single-line service would permit less handling of the commodities.	Bowman. Only made six deliveries to Florida in the last 6 months.
14. (886) Phillips Petroleum Company, Bartlesville, Okla. Lubricating oils and greases.	From shipper's plant at Kansas City, Kans. to points in Florida, Georgia, North Carolina and South Carolina. Shipper moved almost 12.5 million pounds during 1965 to the above points.	Watson-Wilson, Handway, T.I.M.E. and Transcon (direct to Atlanta), Georgia Highway and Control.	Wants single-line service to those points which are now served by joint-line operations. Single-line service would avoid tracing problems.	Bowman. Shipper has no specific complaints with existing service. It prefers single-line service
15. (887) Wilson & Co., Inc., Kansas City, Kans. Process meats, hanging meats, and meat products.	From Kansas City, Kans. to the gateway of Atlanta, Ga. From 9/19/66 to 12/31/66, shipper moved 40 TL by motor carrier to Atlanta. Average weight was 32,000 to 35,000 pounds.	Refrigerated Transport and Hirschbach, Jones.	Wants fast direct-line service because its products are perishable. Most regular-route carriers do not have appropriate equipment. Wants proposed second-morning regular service to Atlanta.	Jones. Gordons has very little refrigerated equipment available. Witness may not be responsible for all routings. Requires refrigerated equipment.
1. (908)	See shipper under North Carolina heading.			

Summary of evidence of supporting shippers—continued

Shipper, location and commodities	Origins, destinations, routing, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] Baton Rouge, La.	See shipper under Miss. shipping [illegible]			
[illegible] Baton Rouge, La. Principal commodities [illegible] fiberglass products	Inbound LTL shipments from Adamsville, Thomaston, [illegible], Mableton, [illegible] and Piney, Ga. The average weight of the shipments is between 200 and 2,000 pounds.	From Thomaston shipper has used a Pigeon Service ... Rail Co. ... Port Royal ... Herrin and Herrin interchanging with Dixie and Red Ball ... From Adamsville ... Pigeon ... Herrin interchanging with ... From Mableton ... Herrin with Duncan interchanging with ... Red Ball, and ... From Adamsville ... other uses Herrin a highway interchanging with Red Ball ... West and Herrin ...	Shipper wants a better, faster, and more consistent service that it has so that it would be better able to serve its customers. Shipments would be highway by connecting carriers and interroad with Strickland at Atlanta. Shipper expects 1-day service from the origins to ... Shreveport, except ... ments from Piney which it feels should take ... days.	Strickland
[illegible] Baton Rouge, La. Principal commodities [illegible] resins and [illegible] liquids	Shipper received at its Baton Rouge plant during the first 6 months of 1964 [illegible],000 pounds chemicals from its facility at Orangeburg, S.C. Its facilities at Houston, Tex. received approximately 50,000 pounds of chemicals from its Orangeburg facility during this same period. Outbound from Baton Rouge shipper has movements to Birmingham, Ala., Fort Pierce, Fla. and Stone Mountain, Ga.	Shipments inbound to Baton Rouge from Orange are handled in a three-line haul involving Hucklebee, Dealer and Poplarville with interchanges occurring at Atlanta, Ga. and Pigeon, Miss. Inbound traffic to Houston has been handled in a three-line haul involving Hucklebee, Dealer, and Herrin with interchanges occurring at Atlanta and New Orleans, La. Outbound to Birmingham from Baton Rouge Poplarville interlining with Dealer are used on TL shipments and Ryder is used on LTL shipments. Ryder was used to Fort Pierce but shipper was forced to commence utilizing the two-line service of Herrin and Central to this point. Also, Ryder is used from Baton Rouge to Stone Mountain.	[illegible] traffic is important on inbound shipments in case after the continuation of its manufacturing process depends on the timely receipt of the commodities. On ... traffic from Baton Rouge to Birmingham shipper allows 3 or 4 days ... indicates that it is not receiving consistent service on this traffic. From Baton Rouge to Stone Mountain shipper allows 4 days. Shipper wishes to substitute a one-line haul for the existing three-line haul on inbound traffic to Houston and ... Baton Rouge.	Herrin and Deaton. Shipper is satisfied with the existing service from Baton Rouge to Fort Pierce. It is aware that although it uses a three-line service from Orangeburg to Baton Rouge it has available the services of a number of carriers which can render two-line service. Shipper also supports ... (Docket No. MC-F-1964) under Docket heading.
[illegible] American Hotel, Inc. New Orleans, La. Frozen doors and frames	From New Orleans to points in Georgia such as Atlanta and to points in Alabama such as Birmingham, Mobile, and Montgomery. Shipper has between 12 and 15 movements daily with an average weight of between 1,000 and 4,000 pounds. Shipments to Georgia amount to approximately 12 percent of the total traffic and to Alabama about 15 percent. Shipper expected to increase its output by 15 percent in the year following the filing of its statement.	Herrin, Red Ball, Johnson, Ryder, Deaton.	Dixie will not handle shipments [illegible] because of damage claims. It continues to handle other of shipper's traffic. Shipper prefers single-line service because it reduces the risk of damage. Time in transit is important because deliveries are often scheduled when a job site is ready. ... in transit is important because of the competitive nature of shipper's business. Shipper expresses a need for the proposed overnight service from New Orleans to Pensacola. Johnson assertedly requested shipper to tender its Pensacola traffic to another carrier because Johnson had more freight than it could handle and the traffic was not profitable without a backhaul. Shipper is using Johnson on this traffic, but the pickup service is slow. A dealer of shipper's has indicated that it will sell another line of appliances if transit time to Pensacola is not improved. Shipper indicates that Central will not make pickups.	Herrin. Shipper has satisfactorily used Herrin's service. It indicates that except for a few instances it had no criticism of the existing carriers.
[illegible] Frigidaire Sales Corporation New Orleans, La. Frigidaire appliances	From New Orleans to points in Florida shipper has 15 shipments a day, with an average weight of 900 pounds. Shipper has desires at Pensacola, De Funiak, Fort Walton, Crestview, and Panama City, Fla. It has about 190 shipments a month from New Orleans to Pensacola. About 60 percent of shipper's Florida traffic moves to Pensacola and the remainder moves to outlying areas.	West and Johnson to Chipley, Fort Walton, and Panama City shipper uses the three-line service of West, Cooper, and [illegible].		Herrin. Herrin does not propose to serve Chipley, Fort Walton and Panama City. Shipper testified that following a meeting between representatives of Johnson and shipper in April 1964 the former commenced rendering daily pickup service to shipper's plant. It did indicate that in the 60 days preceding the hearing it was possible that Johnson handled a total of 50,000 pounds from shipper's plant to Pensacola.

...mary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applicant supported and remarks
6. (201) Bastrop and Springhill, La.	See shipper under South Carolina heading.			
7. (240) 23 stores including those located at Shreveport and Bastrop City, La.	See shipper under Texas heading.			
8. (256) Morgan S. Lindsay Co., Inc., Monroe, La. Warehouse operation from Chain Store general merchandise	Shipments from Monroe to stores located in Alabama, Arkansas, Louisiana, Mississippi, and Texas. Shipper received 16,000,000 pounds at Monroe during 1965—much from southeast.	Ryder direct from some points in Carolinas. Bowman joint-line service with interchange at Memphis, Tenn. Akers, Strickland, Roadway, Thurston, Hart, Lee Way, McLean, T.I.M.E. and Cole.	Dissatisfied with Ryder service because of delays and difficulties in collecting claims. Shipper introduced a transit time study which shows that on inbound traffic to Monroe, excluding weekends, it is receiving between 4 and 5-day service from Pennsylvania; between 3- and 4-day service from North and South Carolina; between 4- and 5-day service from the Middle Atlantic States, 4-day service from Georgia, and over 7-day service on one-half of the listed traffic from New England.	Johnson and Bowman support in for inbound shipments
9. (316) Selber Brothers Shreveport, La. Clothing	Inbound at Shreveport shipper receives 50 shipments a month with an average [illegible] of 100 pounds a shipment from points in North and South Carolina, Mississippi, Alabama, Florida, and from Atlanta, Ga.	Ryder is used on [illegible] of the involved traffic with the remainder being handled by Herrin and East Texas	Wants second-morning delivery [illegible] wants deliveries on Saturdays.	Strickland
10. (332) Cantaw Corporation Chicago, Ill. Vending machines.	Inbound at its Baton Rouge, La. Houston and Dallas, Tex. plants shipper receives movements from Shippany, N.J. Shipments also move from South Kearney and Dover, N.J. to Dallas. Mostly LTL.	To Baton Rouge shipper uses Super Service, Johnson, Strickland, T.I.M.E., and Navajo, to Dallas Kramer interlining with Transcon, Yellow Forwarding, T.I.M.E., Universal Carloading, and Strickland, are used, and to Houston Kramer interlining with Transcon, Yellow, Consolidated and Roadway are used.	Dissatisfied with having to leave a 14-day lead time for shipments from Shippany, N.J. to Dallas. Transit study on shipments to Dallas indicates 8 to 13-day service from Shippany except for Yellow Forwarding Co., service time ranges from 7 to 13 days.	Bowman and Johnson.
11. (537) Poloron Products Ruston, La. Outbound: picnic jugs, ice chests, charcoal stoves, folding chairs, and Christmas tree decorations. Inbound: plastic cup and caps, plastic spigots, and extrusion aluminum and steel and coin envelopes	Inbound shipper receives at Ruston about two shipments a month from Opelika, Ala. during its busy season. The shipments weigh an average of about 5,000 pounds. Outbound from Ruston shipper has about 200 movements a month, with each shipment weighing approximately 400 pounds, to Columbus, Savannah, Atlanta, Forest Park, Macon, and Doraville, Ga. and Birmingham, Ala. Inbound shipments also move from Birmingham, Ala., and Helena, Ga.	Outbound Ryder, East Texas, Brassell, and Red Ball. Inbound East Texas or Red Ball interlining with origin carriers to provide service from Opelika to Ruston. (Interchange at Birmingham) Ryder and East Texas from Birmingham to Ruston. Ryder, Johnson, Dixie, and East Texas from Atlanta to Ruston.	Time in transit important on inbound shipments in order to maintain production schedules and on outbound shipments to meet customer demands especially during peak summer seasons. Shipper desires third-morning delivery to Birmingham and Atlanta, and fourth-morning delivery to smaller points around Birmingham and Atlanta.	Herrin and Strickland will use applicants to Shreveport, La. and a local carrier (Cavanaugh Motor Freight) between Shreveport and Ruston.
12. (538) Mid Continent Steel Casting Corp. Shreveport, La. Steel castings	From Shreveport to Cedartown, Savannah, and Cordele, Ga.; Montgomery, Ala.; and Tarboro and Maysville, N.C. Shipper has between 10 and 15 movements a month weighing between 2,000 and 3,000 pounds each.	Ryder.	Desires second-morning service to Atlanta. Currently shipper operates on a lead time of up to 10 days for shipments to Atlanta and Birmingham and up to 2 weeks for shipments to the Carolinas.	Strickland.

Summary of evidence of supporting shippers not filed

LOUISIANA—Continued

Shipper, location and commodity	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
(352) Gym Dandy, Inc. Boss[illegible] City, La. Playground [illegible] children's wearables, and gas[illegible]	From Bossier City (Shreveport commercial zone) shipper has daily movements to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Tennessee and the entire eastern region. The shipments weigh from a minimum to C[illegible]. Peak season from January to June or July 18-24 loads a day during peak season; 5 a[illegible] to 8 a[illegible] month a year	East Texas, Ryder, and Red Ba[illegible] with gateways at Memphis, Tenn[illegible] Birmingham and Atlanta, Ga.	Frequent shortages during [illegible] Herrin secondarily delivers from Shreveport to Atlanta	[illegible] and [illegible]
(353) The Brewster Co. Shreveport, La. Distributor of [illegible] and equipment, and [illegible]	Inbound to Shreveport daily. 25 shipments a month weighing an average of 300 pounds are received from the East, East Coast, South, and Southeast. Outbound shipments about 90 shipments a month, with an average weight of 200 pounds, to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Virginia, West Virginia, and Kentucky	Ryder, Red B[illegible], East Texas, and Acme	[illegible] service [illegible] Atlanta and overnight service from Birmingham. Herrin's time reported particularly [illegible] outbound shipments of parts since these are usually used in [illegible] Inbound shipments from Chattanooga, Tenn. are at times [illegible] days. [illegible] Atlanta the shipment took 4 days and another 7 days, and a shipment from Louisville by truck 4 days	[illegible] and Ball.
[illegible] Overweight Motor Freight Rustin [illegible] commodities common carrier	Pick up freight destined from and points in the southeast through interchange points at Monroe and Shreveport. [illegible] handles about 30% shipments a month average weight 19[illegible] pounds	Ryder, ETMF	Wants a carrier that rates on paper products in South[illegible]	Strickland: Shipper is currently using 25 [illegible] loads a month because of lack of interchanging carriers
(380) Dresser, Inc. Alpine, Tex. [illegible]	From Alpine City to points on the Gulf and Atlantic Ports. Outbound volume is 500,000 pounds monthly. From middle Atlantic and the New England states to Alpine City. Receives 800,000 pounds monthly. Other outbound shipments all made to Birmingham, Montgomery, and Mobile, Ala., Atlanta, Columbus and Rome, Ga., and to Jackson, Miss. About 100,000 pounds moves to these areas each month	Red Ba[illegible], Brosw[illegible], Herrin	Wants direct single line service for faster and more reliable deliveries.	Herrin: Shipper has never tried several interline combinations
[illegible] Paul Payne and Abbreviate, Ind[illegible]	See shipper under Texas heading			
[illegible] (Inc. Baton Rouge, La. Building and hardware supplies	From points in Alabama, Georgia, New York, Ohio, and South Carolina to Baton Rouge Monthly shipments range between 100 and 2,000 pounds	Jordona, Red Ball, Jones, Tex., Northern, Consolidated, Ryder, Mercury, Atlas, Campbell, Brosvell, Valley	Wants faster service. First-day service desired from Atlanta, Ga. Average transit time now 5 to 6 days, including weekends	Herrin: Shipper does not [illegible] so all traffic during period
[illegible] (Carpet Sales Co. Baton Rouge, La. Carpets	From Carlisle, Pa., and Rome and Dalton, Ga., to Baton Rouge. Monthly shipments range between 100 and 2,000 pounds	Wade, Ryder, Brosvell, Bailey, Jones	Wants better than 5-day service. Average transit time is now 5 days from Pennsylvania and 7 days from Georgia, including weekends	Herrin: Cannot be truly done because all shipments during period covered
[illegible] (Coast Chemical Co. Kansas City, Mo. Insecticide	From shipper's plant at Baton Rouge, La., to points in Maryland, Pennsylvania, North Carolina, South Carolina, Tennessee, Alabama, and Georgia. About 45 million pounds moves annually. TL and LTL shipments	Ryder, Wade, Herrin, Gordona, Strickland, Copperstate, Brosvell	Presents [illegible]	[illegible]

Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
21. (W49) Fletcher Equipment Company Baton Rouge, La. Contractors equipment	Inbound to Baton Rouge shipments are received from Atlanta, Ga., Birmingham, Ala. and points in New York, Pennsylvania, New Jersey, and Virginia, among other States. Shipper receives between one and four shipments each day and the shipments each day and the shipments weigh between 100 and 30,000 pounds with the average weight being about 900 pounds.	Red Ball, Ryder, Acme, Gordons, Herrin, Brasswell, Sale, Strickland, Roadway, Cole, T.I.M.E., and Johnson originate Atlanta movements, and Campbell and Red Ball deliver them. Ryder renders single-line service from Atlanta to Baton Rouge. New Jersey, Pennsylvania, and Virginia shipments are originated by Ryder, Roadway, Strickland, T.I.M.E., Johnson, and McLean and are delivered by Brasswell, Red Ball, Acme, Gordons, Herrin, and Sale.	Shipper indicates that it has been forced to maintain a larger inventory than it would like to because of poor transportation service; transit time and consistency of transit time are important to shipper. It introduced two transit time studies. The first lists 11 shipments from Atlanta, delivered between April and September 1965 and August 1965. Transit times were not given for two listed shipments. The five shipments had transit times, including in some instances weekends, of 3, 7, 9, 9, and 6 days, respectively. One shipment from Ohio, including two weekends and a holiday had a transit time of 13 days, three shipments from New Jersey had transit times, including weekends in all instances of 13 (include 2 weekends), 9, and 8 days respectively. One shipment from Virginia had a transit time, including two weekends, of 10 days. The second study listed about 45 shipments from points in Ohio, New Jersey, Georgia, New York, Delaware, and Pennsylvania. Shipper was not satisfied with the transit times.	Herrin. Shipper is satisfied with Herrin's service as a delivering carrier. It wants to use applicant from the Memphis item gateway.
22. (-12) Shreveport and others at points in Louisiana.	See shipper under Texas heading.			
23. (W64) Olin Mathieson Chemical Corporation Forest Products Division West Monroe, La. Paper products	From points on the eastern seaboard to West Monroe. From May to August 1965 shipper received 178 shipments from above points Total weight was about 300,000 pounds From West Monroe to points on the eastern seaboard. From August to September shipper shipped in excess of 90 shipments to above points average weight 2,000 pounds.	Red Ball, Ryder, Brasswell, Acme, Strickland, Evers, M C D, McLean, Roadway	Wants faster service. Average transit time is 10 days, including weekends. Wants next-day delivery to Atlanta and 2-day service to Carolinas.	Johnson, Bowman, Red Ball. Shipper uses rail and private carriage to transport most of the involved traffic.
24. (S09) Lake Charles Harbor and Terminal District Lake Charles, La	None given.	None given.	The growth and expansion of the Lake Charles Harbor and Terminal District, and its consequential need for improved motor carrier services.	Baggett, Bowman Boston, Floyd & Beasley, Red Ball, Strickland. Lake Charles Harbor and Terminal District is a politic subdivision of the State of Louisiana.
25. (W48) Palmolive Milner Corp. Kenner, La. Iron castings electrical motors laundry machinery and parts.	From Columbus, and Atlanta, Ga., St. Petersburg, Fla., Detroit, Mich., Warsaw, N.Y., Glenbrook, Conn., and Spartanburg, S.C., to Kenner. From Kenner, La., to Birmingham, Montgomery, and Mobile, Ala., Atlanta, and Columbus, Ga. Inbound shipments range between 52 and 30,000 pounds daily outbound shipments range between 50# and 15,000 pounds.	Cole, Ryder, West Bros.	Wants faster service. Average transit time from Columbus is 4 days; from Atlanta 4.9 days; and from Detroit 4 days, including weekends.	Herrin. Shipper's outbound traffic requires special trailers because of its height. Transit time study includes all traffic for period covered.

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Shipper, origin and conditions	Destinations, routes, type	Existing service	Reasons for supporting	Opposition and remarks
(4) (566) Ideal Manufacturing Co. Lafayette, La Made to refrigerators, materials and supplies necessary to the erection or installation thereof	From Fernandina, Fla., Atlanta, Ga., and Birmingham, Ala., to points in Louisiana approximately 1,000 pounds a month	Ryder	Needs faster service	Rec Ba.: It appears that Ryder in conjunction with Herrin Express can serve shipper on single-line service
(5) (567) American Metal Inc. New Orleans, La Metal doors and door frames	From New Orleans, to points in Alabama and Tennessee. Shipments range between 11 and 12,000 pounds	Viking, Ryder, Campbell, Dixie, Gratiot, Strickland, Ala	Receives faster service and single line service	Ryder: Shipper could not give the name of the points within the [illegible] it allows the single line service
(6) (568) Erm Inc. Baton Rouge, La Building and hardware supplies	From points in Georgia, New [illegible] Tennessee, Florida, Alabama, to Baton Rouge. Shipments range between 50 and 5,900 pounds	Dixie, Motor Lines, Ryder, McCombs Strickland, Herrin, Sale, Inc., Braswell	Needs faster service. Average transit time 5 days	Ryder: Johnson, Roadway and Herrin
(7) (558) Baton Rouge, La	See shipper under North Carolina heading			
(8) (558) Beco, Inc. Monroe, La Electrical equipment and supplies	From Atlanta, Ga., Trenton, N.J., Philadelphia, Pa., New York, N.Y., and Hatboro, N.C., to Monroe. Approximately 500,000 pounds annually	Ryder, Herrin, Red Ball, Braswell	Needs faster service. Allows 10 days lead time from Trenton and Philadelphia and 10 days lead time from South Carolina and Atlanta.	Beaman, Johnson
(9) (562) Lafayette Woodworks Lafayette, La Millwork	From Birmingham, Ala., to Lafayette, La. Shipments range between 40 and 374 pounds	Ryder, Herrin, Sale, Red Ball, Southern	Wants second morning service from Birmingham to Lafayette. Currently allowing 4 to 5 days lead time	Herrin: Testimony indicates that shipper is not in complete control of routing. Specific complaint against Ryder and Sale. (claims)
(10) (564) Lastelle Wholesale Specialty Company Lafayette, La Plastic flowers and wreaths	From Montgomery, Ala., and Ridgefield, N.J., to Lafayette. Shipments range between 41 and 975 pounds	Johnson, Main, Sale, Herrin, Dixie, Cole, Ryder, B'Nam	Needs faster service. Average transit time 7 days including weekends	Herrin: Transit study does not include all shipments which moved during the study period
(11) (567) Howard Stark Company, Inc Thibodaux, La Candy	From Thibodaux to points in Alabama, Georgia, Florida and Mississippi	Herrin, Sale, Ryder, Southern, Red Ball	Wants regular daily pick-up	Herrin: Traffic is seasonal
(12) (569) Robinson Bros., Inc Baton Rouge, La Auto parts	From Atlanta, Ga., Baton Rouge. Between 1,000 and 1,500 pounds moves monthly	Ryder, Cole, Red Ball	Joint line service [illegible] Allows 5 to 6 days lead time from Atlanta to Baton Rouge. Wants faster service.	and Ball.

Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
95. (570) The Princeville Canning Co. St. Francisville, La. Canned sweet potatoes	From Francisville, La., to Atlanta, Ga. Approximately 1 million pounds annually.	IC, MAD, I & M, Red Ball, Dixie, Gordon ..., Ryder, Mid Texas, Colo.	Joint-line service inadequate. Wants improved service.	Red Ball. Traffic is inbound.
96. (571) Dixie Office Supply Co. Lafayette, La. Office supplies	From Atlanta, Ga., and Birmingham, Ala., to Lafayette. About three shipments a month from Atlanta ranging between 250 and 600 pounds and about two shipments monthly from Birmingham averaging about 300 pounds.	Ryder	Needs more consistent delivery service, and wants faster transit time. Feels that 7-day transit time from Birmingham is good service.	Red Ball. Shipper is using the single-line service of Ryder.
97. (572) Lighting, Inc. New Orleans, La. Electrical supplies	From Atlanta, Ga., to New Orleans. Weekly shipments ranging between 100 and 5,000 pounds.	Johnson, Ragsdale, Red Ball, Morrin, Ryder.	... in reaching ... and ... most load time.	Morrin
98. (573) Morgan & Lindsey, Inc. Monroe, La. Clothing	From Atlanta, and Macon Ga., and Birmingham, Ala., to Monroe. From Monroe to Greenville, Miss. Inbound daily shipments of about 950 pounds, from each point, and outbound shipments about 123,520 pounds for a 10-month period in 1946.	Brownell, Morrin, Missouri, Pacific, Ryder, Red Line, Red Ball.	Needs faster service. Average transit time from Atlanta is 6 days. From Birmingham 4 days from Macon 7 days. (All include weekends). Wants 2-day service from Atlanta to Monroe and overnight service from Birmingham to Monroe. (By transit time figures given on outbound shipments).	Red Ball, and Morrin. Traffic is inbound.
99. (574) W.B. Utley Paint Co., Inc. New Orleans, La. Paint	From Chattanooga, Tenn., to New Orleans LTL and truckload shipments of about 5,000 pounds twice a week.	Ryder	Needs faster service. Wants consistent second-morning service.	Bowman. Baggett appears to be able to serve shipper in single-line service.
100. (586) Sun Lighting Fixtures, Inc. Monroe, La. Electrical fixtures and appliances	From points in New York, Pennsylvania, New Jersey, Massachusetts, Georgia, and Virginia, to Monroe. Shipments ranging between 30 and 1,195 pounds.	Red Line, Ryder, Red Ball, Acme Fast Freight, Perkins, Jack Cole, Pilot, STR, T.I.M.E., Broadway, ATI, Murdock, Bell, Brownell, Morrin, Kavanaugh.	Needs faster service. Average time in transit is 8 days, including weekends.	Bowman, Johnson. Transit time does not include all shipments which moved during the study period.
101. (589) Stag Shop, Inc. West Monroe, La. Men's clothing	From Winnsboro, S. C., Hickory, Winchester, Tenn., Sunbury, Pa., Attleboro, Mass., Northvale, N.J., Atlanta and Hamilton, Ga., and Birmingham, Ala., to West Monroe. Shipments range between 35 and 2,295 pounds.	T & P R.R., MOPAC Railroad, Norvin, Red Ball, Ryder, Thurston, T.I.M.E., ATI, JMC, WCL.	Joint-line service inadequate. Average transit time is 4 days including weekends.	Bowman, Johnson. Transit time does not include all shipments.
102. (597) Fraction Tire Service, Inc., Morgan City, La. Tires and tubes	From Gadsden, Ala., and Akron, Ohio, to Morgan City. Shipments range between 30 and 569 pounds.	Ryder, Red Ball, Norvin, Bowman, Kennedy.	Needs faster service. Wants 2 or 3-day service. Average transit time is 7 days, including weekends.	Norvin. Special orders often require expedited service.
103. (599) Ethyl Corporation, Baton Rouge, La. Dry freight and chemicals	From Baton Rouge and Orangeburg, S.C., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Virginia. From points in Massachusetts, New York, Pennsylvania, Virginia, Connecticut, and Delaware, to Baton Rouge. Outbound between 55 and 372,250 pounds moved to destination States for 3-month period 1946. Inbound between 150 & 8,500 pounds moves daily.	Akers, ETMX, Kennedy, Strickland, Ryder, James, Overton, Smith, Hackaby, Wilson, Stick, Poplarville, Wooleyhan, Red Ball, Sale, Gordon, Morrin, Neil, Air.	Joint-line service inadequate. Average transit time is 9 days, including weekends, on inbound and outbound shipments.	Bowman, Johnson. Transit time does not include all shipments. It does not appear that Ethyl Corp. controls the routing of inbound shipments.
104. (600) Pelican Office Supply, Inc. Baton Rouge, La. Office equipment	From High Point, N.C., Greenville, S. C., and Birmingham, Ala.; to Baton Rouge. Approximately 350,000 pounds annually.	Ryder, Consolidated, Tupperstate, Red Ball, Morrin, Gordon, Complete...	Wants faster service. Wants third-day service.	Bowman, Johnson
105. (601) Copolymer Rubber and Chemical Corp. Baton Rouge, La. Synthetic rubber	From Baton Rouge, and Addis, La., to points in Connecticut, Massachusetts, New Jersey, and Maryland. About 4 million pounds, 195,000 pounds, 255,000 pounds and 25,000 pounds to respective destination States monthly.	Gulf, Johnson, Corporate, Consolidated, Ryder, Hannaway, Strickland, Akers.	Needs expedited service.	Johnson

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Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodity	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
46. (602) Interstate Electric Co. Shreveport, La. Electrical products	From points in Connecticut, New York, North Carolina, Pennsylvania, New Jersey, Georgia, South Carolina, Ohio, Va., and Alabama to Shreveport. Approximately 40,000 lbs in all orders	Herrin, Ste. Marie, Ryder, Red Ba..., East Texas, Acme	Want all service to Shreveport. Wants either all motor or rail-motor transit time of 5 days, including weekends.	Number, shown shipper indicated that if Red Ball could give service from some points, but did not indicate which points. Transit study includes all shipments during period. Service to the single-line service of Red Ball. Also available to shipments to Pine Bluff, points, and single-line service is available to Alabama points Herrin
47. (605) Standard Fittings Co. Opelousas, La. Iron and steel fittings	From Opelousas to points in Georgia, Alabama, Mississippi and Florida. Daily shipments ranging between 2.0 and 10,000 pounds.	Herrin, Ryder, Red Ball	Prefer Opelousas service therefore line single-line service	
48. (606) General Electric Co. New Orleans, La. Electrical appliances	From New Orleans to points in Florida. Daily shipments ranging between 50 and 1,500 pounds.	Herrin, Johnson, Red Ball, Boggs	Wants faster service. Presently allowing 3 days transit time.	Red Ball transit study includes all shipments during period.
49. (607) Eutorge Drug Company, Inc. Lafayette, La. Drugs	From Atlanta, Ga., and Bontiport, Ala., to Lafayette. Monthly shipments ranging between 150 and 320 pounds	Herrin, Southern, Red Ball, Ryder, SAIF	Wants faster service. Wants store-door service. Average transit time is 6 days from Bontiport, and 4 days from Atlanta. Commodity included in both.	Red Ball, Ryder offers similar transit study to include all shipments during period covered
50. (608) General Office Supply Co., Inc. Lafayette, La. Office equipment	From Atlanta, Ga., and Birmingham, Ala., to Lafayette. Weekly shipments ranging between 600 and 1,800 pounds	Ryder	Wants faster service. Average transit time 6 days. Average delay experienced during period between 3 days and 5 days.	Red Ball, Ryder offers similar transit study to include all shipments during period covered
51. (609) Dresser Industrial Valve, Aliceville, La. Valves	From Aliceville to Atlanta, Ga., Birmingham, Ala.	Red Ball, Dresser, Herrin.	Has faster service.	Red Ba...
52. (610) APCO Corp. Alexandria, La. Wallboard and building materials	From Alexandria to Atlanta, Ga., and Birmingham, Ala. About 10,200 pounds monthly.	Red Ball, Jack Cole, Campbell, Harper Bros.	Needs fast or prompt service. Wants pick-up service.	Red Ba...
53. (611) ACME Warehouse, Inc. New Orleans, La. General commodities	From New Orleans to Mobile, Ala., and Pensacola, Fla., and from points in Georgia, to New Orleans, TL and LTL shipments (volume and frequency of traffic not given.)	Herrin, Johnson, Centra..., Dixie Ass..., West, Fe..., Brown, Dixie	Difficult to get rail & Chgo. Frequently delaying 4 days over line.	Herrin
54. (612) J. Aron Co., Inc. New Orleans, La. Sugar and coffee	From New Orleans and Lucrose, La., to points in Alabama, Mississippi, and Florida. TL and LTL shipments specific volume and frequency of traffic not given.	West, Johnson, Centra..., Dixie, Jordana, Huff	Wants fast line ser...	Re...
55. (613) Dickham, Inc. Baton Rouge, La. Merchandise sold in retail or department stores	From Atlanta, Ga., and Birmingham, Ala., to Baton Rouge. Monthly shipments range between 2,500 and 10,000 pounds.	Ryder, Herrin, Red Ball, Safe, Brosmell, Consolidated, Copperstate.	...line service adequate. Wants faster service from Atlanta in 5 days until 6 weekends.	Red Ball, Transit time includes all shipments during period covered.
56. (614) Wright Root Beer Co. Baton Rouge, La. Bottle caps	From Birmingham, Ala., to Baton Rouge, La. About 15,000 pounds monthly	Campbell, Red Ball, Ryder.	Wants lower rate.	Red Ba...
57. (615) Baton Rouge Wholesale Drug Co. Monroe, La. Drugs, hospital supplies	From points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Pennsylvania, Virginia, Georgia, North Carolina, and Washington, D.C., to Monroe. Monthly shipments range between 30 and 1,000 pounds.	Atlanta, Arkansas, Brasswell, Johnson, Herrin, Akers, Strickland, Harrison, Red Ball, East Texas, Red Line, Strickland, Ryder, Longhorn, Brosmell, Southern, Mulloan, Consolidated, Copperstate, Thomas & Dixon, MCA, Pilot, T.I.M.E., TCT.	Insist on service. Wants more than one a day. Average transit time 3.5 days, including weekends	Brosmell, Johnson. Transit study includes all shipments, during per...

Summary of evidence of supporting shippers--Continued

LOUISIANA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
58. (635) Elmer Candy Corp. New Orleans, La. Candy.	From New Orleans to points in Alabama and Tennessee. Weekly shipments ranging between 72 pounds and 1,241 pounds.	Campbell, Dixie, West Brothers.	Needs faster service.	Bowman.
59. (638) Selig Manufacturing Co., Monroe, La. Upholstery fabric furniture.	From Monroe to points in Florida, Maryland, Connecticut, New York, Pennsylvania, and North Carolina. About 20,000 pounds monthly.	East Texas, Cole, ETSWMC, Old Dominion, Akers, T.I.M.E., Rapid, Strickland, Thurston, Harper, Carolina, Overnite, Ryder, Roadway, Turner, NC, Standard, Mason & Dixon, Pilot.	Joint-line service inadequate. Wants faster service. Wants 4- to 5-day service to Northeastern points, and 2-day service to southeastern points.	Bowman, Johnson.
60. (640) American Decorators, Inc. Baton Rouge, La. Paintings, accessories and carpeting	From points in Georgia, to Baton Rouge. Weekly shipments ranging between 250 and 1,000 pounds.	Red Ball, Ryder.	Prefers single-line service. Wants faster service. Presently allows between 7 and 9 days lead time.	Harrin.
61. (641) Flint Ink Corp. New Orleans, La. Printing inks.	From New Orleans, La., to Pensacola, Fla., Mobile, Ala., and Atlanta, Ga., and return. Weekly shipments averaging about 500 pounds.	Central, West Brothers, Johnson, Cole, Dixie.	Needs faster service. Wants second-morning service. Presently allowing between 6 and 9 days lead time.	Harrin.
62. (642) Klare Flour Covering Co., Lake Charles, La. Flour covering, draperies and related supplies.	From points in Georgia and Tennessee to Lake Charles. Weekly shipments range between 300 and 3,000 pounds.	Harrin, Ryder, Southern.	Wants faster service. Presently allowing between 10 days and 3 weeks lead time.	Harrin.
63. (643) Non-Arc Welding Supply, Inc. New Orleans, La. Gas and medical supplies and equipment.	From Atlanta, Ga., and Birmingham, Ala., to New Orleans.	Cole, Red Ball, Johnson, Ryder.	Needs faster service. Wants first-afternoon service from Atlanta, and overnight service from Birmingham. Average transit time is 7 days, including weekends.	Harrin. Emergency shipments sometimes required. Transit times given were selected to show poor service.
64. (644) Schlesingers Wholesalers Lake Charles, La. Vending machines, candy, cigarettes, chewing gum and other articles sold in vending machines.	From Atlanta, Ga., Birmingham and Montgomery, Ala., to Lake Charles. Monthly shipments ranging between 150 and 500 pounds.	Harrin, Sais, Southern, Strickland.	Wants faster service.	Harrin.
65. (646) Baton Rouge Wholesale Drug Co. Baton Rouge, La. Retail drug store items.	From Atlanta, Ga., to Baton Rouge. Monthly shipments ranging between 84 pounds and 19,233 pounds.	GFA, Ryder, Johnson, Saint Consolidated, Southern, L & A, Gardone, Cole, Red Ball, West Brothers.	Joint-line service inadequate. Wants second-day service. Average transit time is 5 days including weekends.	Red Ball. Transit study includes all shipments from Atlanta during period covered.
66. (656) Nelson & East Ford Co. Zachary, La. Automobile parts.	From Atlanta, Ga., to Zachary. About 1,000 pounds monthly.	Ryder, Cole, Onone, Red Ball, Greyhound Bus Line.	Prefers single-line service.	Red Ball.
67. (657) Superior Sewing Machine Co. Baton Rouge, La. Sewing machines and related items.	From Atlanta, Ga., to Baton Rouge. Weekly shipments ranging between 85 and 1,050 pounds.	Ryder, T.I.M.E., Red Ball, Cole.	Joint-line service inadequate. Wants 2-day service.	Red Ball. Emergency shipments sometimes required.
68. (661) (a) F. Strauss & Sons, Inc. (b) Gibson Wholesale Distributors, Inc. (c) Gulf Gibson Wholesale Distributors (d) G. Michael Dry Goods Co., all of Monroe, La. Beer and whiskey, wholesale goods for discount stores and dry goods.	From Atlanta, Ga., Dallas, Tex., Memphis, Tenn., Birmingham, Ala., and Greenville, Miss., to Monroe, and return. Shipments range between 40 and 1,150 pounds.	Akers, T.I.M.E., Georgia Highway, Hackabee, Northern, Ryder, Red Ball, Kavanaugh, Viking, Harrin, Campbell, Boston, F & W, Gardone, Jones, Cole, R.C.A., R.C.M.L.	Needs faster service. Average transit time from Atlanta is 5 days and from Birmingham is 6 days.	Red Ball, Johnson. Transit time does not include all shipments during period.

Summary of evidence of supporting shippers—Continued

MC-[illegible]—Continued

Shipper, location and commodities	Origin, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
(656) Dyk Dandy, Inc Bossier City, La Lamp posts [illegible] equipment	From Bossier City, La., to Richmond, Va., Baltimore, Md., Washington, D.C., Wilmington, Del., and points in Pennsylvania. About [illegible] pounds moves annually.	Strickland, Red Ball, East Texas, Herrin, A.B.F., Brownell, Kerr, Bowman, Roadway, T.I.M.E.	Joint-line service inadequate. Wants faster service.	Bowman, Johnson
(818) Rustic Ware to Alexandria, La. corrugated shipping containers and [illegible] related items Alexandria, La.	Between Alexandria, La., on the one hand, and, on the other, Alexandria. About 3,6[illegible] pounds weekly.	Johnson, S.F.T., Red Ball, Ryder, Central, Cole, Air Express	Prefers single-line service. Wants between second-morning and third-morning service.	Red Ball
(768) Traffic Engineers, Inc., Shreveport, La. Traffic signals and controls	From Shreveport, La., Atlanta, Ga., (as a gateway to Southeastern States) and Birmingham, Ala. Shipper presents no volume figures. Receives occasional shipments from Decatur, Ga.	Red Ball interline with [illegible] and Campbell, Ryder, Central.	[illegible] line service to ease [illegible] problem and obtain faster deliveries. Allows 5 to 6 days lead time from Shreveport to Atlanta; 7 days on Florida shipments.	Red Ball. ETMT has direct service from Shreveport to Atlanta.
(768) [illegible] Co. Shreveport, La. Public [illegible]	From Commerce, Ga., to shipper's [illegible] at Shreveport and Houma, La., and Houston, Tex. Receives one or two shipments a day at Shreveport, three shipments a week at Houston, and about one shipment a week at Houma. Each shipment may weigh from 5[illegible] to 500 pounds.	Northern to Atlanta T.I.M.E. to Memphis and Red Ball delivering to Shreveport. Northern to Roadway which delivers to Houston Ryder, Johnson	Too much time delay on shipments to Shreveport and Houma.	Red Ball. Service to Houston is satisfactory. Johnson interlining with Red Ball at New Orleans can offer a two-line service.
[illegible] Shreveport Homes Manufacturing Corp. Pineville, La. Parts for mobile homes	From Atlanta, Ga., and Birmingham, Ala. [illegible] a month from Atlanta area weights ranges from minimum to 2,000 pounds. Receives weekly shipments from Birmingham averaging 500 pounds.	Ryder, Cole, Georgia Highway and Weil [illegible] living with Rec Ball	Wants faster transit time and a single-line service. Wants third-morning service from Atlanta and Birmingham	Red Ball. The proposed service [illegible] not be single-line.
(802) Regal Plastic Supply Co. Shreveport, La. Plastic sheets, rods, tubing and film	From Cartersville, Ga. to Shreveport. Receives two or three shipments a month totalling 4,000 or 5,000 pounds. From Shreveport to points in Arkansas, Mississippi and to Birmingham, Ala. Ships standard cases weighing 340 pounds, some quantities shipped with less weight.	Ryder, Southwestern, AFI, East Texas, Red Ball	Needs a responsive service to meet government contract deadlines.	Strickland. If application were granted Strickland still could not serve Cartersville direct. Present service of Red Ball seems to be adequate. Has several carriers presently available with single-line and joint-line service.
(802) Ditto (Products Co Monroe, La. Steel doors and frames	From Monroe to Greenville, Miss. (200 to 25,000 pounds two times a month) and Atlanta, Ga. (occasionally 700 pounds)	Red Ball, Red Line, Ryder, Herrin	Shipper has lost sales in Atlanta because of poor service. Believes market can be expanded with good single line service to Atlanta. Shipper has experienced damage in joint-line service.	Red Ball. Only has one customer in Florida
(817) Nabors Trailers, Inc. Mansfield, La. Axles, wheels, tires, bearings, steel, aluminum	From Montgomery, Ala. to Mansfield. Receives from Montgomery once a week 1,000-2,000 pounds.	AAA, Ryder Red Ball, East Texas, Dixie	Presently has a three-line service. Wants a two-line service.	Red Ball. Several two-line hauls are available over various gateways. Has no specific complaints.
(821) Waller Pond Company Haynesville, La. Auto parts	From East Point, Ga. (within the Atlanta Commercial Zone) to Haynesville. Receives one shipment a week averaging 500 pounds.	Ryder interlining with Red Ball	Wants single-line faster service. Allows lead time of 5 or 6 days.	Red Ball. It appears Herrin offers single-line service REA can also handle the small shipments. Shipper has been using Ryder and RB for 14 years and has no specific complaints.
(823) Westinghouse Electric Supply Company Baton Rouge, La. Articles handled by electric supply houses	From Atlanta, Ga., Birmingham, Ala., and Jackson, Miss., to Baton Rouge From 1/6/66 to 11/3/66 received in excess of 130 shipments from the above points. Average weight about 300 pounds a shipment	Ryder, Gordon, Sale, Red Ball, Campbell, Valley, West, JMI, Cole, Johnson	Present service is too slow. Wants second-morning service from Jackson to Baton Rouge and one-day service from Atlanta and Birmingham to Baton Rouge. Shipper's transit time study shows that it is generally receiving 3.5-day service from Birmingham, between 4 and 6-day service from Atlanta, and 3 day service from Jackson.	Herrin. Ryder can give 2-day service as shown by the exhibit. In many cases shipper does not select the originating carrier

Summary of evidence of supporting shippers--Continued

LOUISIANA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
79. (825) Louisiana Valve and Fitting Company Shreveport, La. Industrial valves and fittings.	From Shreveport to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Ships three times a week to Birmingham averaging 1,000 pounds. Ships once a week to Atlanta averaging 500 pounds. Ships five or six times a year to Greenville.	Ryder, Red Ball, East Texas.	Wants overnight delivery to Birmingham and second-day delivery to Atlanta.	Red Ball. Shipper has single-line service to Atlanta and Birmingham
80. (835) Bonded Warehouse of Monroe, Inc. West Monroe, La. Numerous items stored in a warehouse (ink)	From Atlanta and Stone Mountain, Ga. to West Monroe. Receives between 100,000 and 120,000 pounds a month.	Braswell, Red Ball, Ryder, Dixie, ETMF.	Much of shipper's traffic is of an emergency nature and expedited deliveries are essential. Existing service is too slow. Allowing lead time of 4 to 6 days from Atlanta. Wants proposed second-day service.	Red Ball.
81. (887) Spectrum Dept. Stores, New York, N.Y. General merchandise.	From Charlotte, N. C. and Atlanta, Ga. to shipper's stores located at Shreveport, La. and San Antonio, Austin, Dallas, Fort Worth, Irving, Garland, and Corpus Christi, Tex. From 7/6/66 to 11/23/66 shipper moved 40 shipments to the involved territory. No weights given.	Bowman, ETMF, ETLWMC, Huckabee, Murdock, Braswell, SWT, SPT, Red Arrow, Central, Consolidated Roadway, Overnite, New Dixie.	Wants improved transit time. Wants overnight service from Charlotte to Memphis. Average transit time is about 8 days including weekends. Wants consistent 3 or 4-day service.	Strickland. Strickland can now serve many of the involved points by using Memphis gateway but shipper has never used this service.
82. (905) Liddell Company Shreveport, La. General sundry items.	From Atlanta and Augusta, Ga., Chattanooga, Tenn., and Montgomery, and Birmingham, Ala. to Shreveport. Receives about 250,000 pounds a year from the above points. All are LTL shipments.	TSP, Red Ball, Universal, Merrin, ETMF.	Wants faster service. Allows lead time of 3 to 4 days but requires 1 or 2-day service.	Bowman, Johnson. Shipper supplier's generally choose the carrier.
83. (917) Five stores.	See shipper under Pennsylvania heading.			
84. (927) F. Lorellard Co., Inc. (UNION Products Co.) New York, N.Y. Animal food.	From shipper's facilities located at Golden Meadow and Lockport, La., to points in Alabama, Georgia, North Carolina, and South Carolina. Annual projected tonnage to points in the above States is about 11 million pounds.	Plant not yet in production. Only interstate carrier with authority to serve Golden Meadow is Merrin.	Wants motor carrier service at its new plant. Wants 2 or 3-day service to Alabama, Georgia, and Carolinas with stopoffs enroute.	Bowman.

MARYLAND

1. (850) Proctor Silex, Inc. Baltimore, Md. Electrical appliances.	From Baltimore to Little Rock and Pine Bluff, Ark., and to points in Mississippi, Louisiana, and Texas. During January 1967 shipper moved 248,700 pounds to the above points.	Freight Forwarders, Roadway, Johnson.	Wants faster transit time because shipper's distributors do not maintain inventories. Roadway refused to pick up a shipment because it did not have any power units available.	Shipper has single-line service of Roadway to many points in Texas. T.I.M.E. offers single-line service to Little Rock. Shipper has not tried joint-line service of Bowman over Memphis, Tenn., Gateway. Johnson also can serve many points directly.
2. (861) Standard Cap & Moulding, Division of Poly Seal Corporation, Baltimore, Md. Plastic bottles and tops.	From Baltimore to Dallas and Houston, Tex. and Little Rock, Ark. Ships 100,000 pounds a year to above destinations. Average shipment weighs 500 pounds.	Associated Texas Freight, Roadway, Trans-American, Bowman.	Wants faster, more dependable single-line service. Shipper has experienced delays, difficulties in tracing and in obtaining pick ups. Shipper was informed that Mercury refused to accept one of its shipments at Birmingham.	Bowman, Johnson. There are four carriers which have single-line service to the destination points. Shipper conceded that only at times is service poor.
3. (916) (a) Baltimore Paint & Chemical Corporation, Baltimore, Md. (b) Symbolead Co. of Florida, Atlanta, Ga. Paints.	From Baltimore and Atlanta to points in Arkansas, Louisiana, Mississippi, and Texas. Ships about 300,000 pounds a month to the above destinations.	Bowman, Gordons, Transcon, ETMF, Ryder, West, Campbell, Roadway.	Present transit time is too slow. Shipper has encountered tracing problems. Wants 2-day service on TL and 3-day service on LTL from Baltimore to Arkansas, Louisiana and Mississippi, and from Atlanta it wants overnight service on TL and second-day service on LTL. From Baltimore to Texas it wants third morning on TL and fourth morning on LTL.	Bowman, Johnson. Shipper has several carriers available to it. Did not submit any evidence of long transit time. Consolidated has authority to serve points in Texas.

...mary of evidence of supporting shippers—Continued

MASSACHUSETTS

Shipper and commodities	Points of origin, destination, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
...United ... and ... Corp., ... Mass. ...	... points in the Southwest. Shipper has shipments from its plants and warehouses in ... Texas, ... City, ... Okla., ... Ark., Clearwater, Fla., and ... Ala., ... that move-ments from numerous existing plants on the East Coast (from Massachusetts to Georgia), to points in the Southwest. Severe ... works annual-ly. The Salisbury, ... plant alone receives ... million pounds annually from the East and Southeast. Practica... all shipments are LTL weighing a minimum to 25,000 pounds. Most shipments weigh between 500 and 2,000 pounds.	Piedmont is used from Clearwater to the Southwest for low England points. Transamerican, T.I.M.E., Roadway, and Consolidated are used. From ... in the middle Atlantic territory to the Southwest, Roadway, T.I.M.E., Strickland, and Transamerican are used in single-line service. Roadway and Ryder are used from North and South Carolina. ...ro, Huckabee, and Overnight are used from Clearwater to Atlanta. Thurston interlining with Red Ball is used from Statesville to Texas. Dixie interlining with Gordons is used from Clearwater. Roadway has rendered a daily pickup service at Clearwater for a number of years. Shipper's private fleet is used to transport draperies from Augusta to Dallas.	Shipper has had difficulty in obtaining consistent transit time to Houston and Dallas, Tex. It indicates a need for the proposed second-day service from Clearwater to Dallas, Fort Worth, and Houston. Shipper prefers single-line service. Ryder's service from the Carolinas has not been satisfactory and shipper has discontinued using it. During April 1966, 20 shipments, which may not include all shipper's traffic between these points during this period, weighing collectively 10,776 pounds, moved from Clearwater to Dallas through Atlanta. They were handled in Dixie interlining with carriers. Some of the transit times were not given, but on those listed two shipments required ... days, two 8 days, four 7 days, four 6 days; and two 5 days, including weekends. Between May 9 and May 13, 1966, Roadway, in single-line service, handled eight shipments weighing collectively 3,410 pounds from Clearwater to Fort Worth and Dallas. Three required 7 days for delivery, two 6 days; one 5 days; and two ... days. Between May 16 and May 20, 1966, Roadway handled 13 shipments weighing collectively 7,022 pounds to the same points. One of the shipments required 8 days, one 7 days; seven 6 days, and four 5 days. Shipper does not consider the transit time satisfactory.	Johnson.
...172) Springfield, Mass.	See shipper under Connecticut heading.			
... (857) Avco-Bay State Abrasive Products Company, Westboro, Mass. Abrasive products and grinding wheels	Outbound, from Westboro to Houston, Tex., Shreveport and Monroe, La., and Jackson, Miss. Shipments move every Friday to above points. Weight range is minimum to 30,000 pounds.	Spector, ETMT, Roadway, Johnson, T.I.M.E., Strickland.	Wants faster service with less damage. Allows 1 week transit time to Houston. Wants proposed 4-day service (including weekends) to Houston.	Johnson. Shipper only ships on Fridays. There are numerous combinations of joint-line service available to shipper which have been untried. Shipper fails to cite specific complaints.
... Hand In... Co., Fiber, Mass. Draperies	From Ta... ... plants ... Louisiana, Mississippi, and Texas. Between 5,000 and 10,000 pounds in LTL lots are shipped to points in the destination States each day.	Yellow Fwd., Strickland, Acme, Midland, Transamerican, Hemingway, Terminal, Lone Star, Edwards, AA, McClean, Johnson, T.I.M.E., Consolidated.	Wants faster transit time and single-line service to avoid delays and eliminate tracing problems. Shipper has experienced delays in pickup service and has discontinued using Roadway.	Johnson. Transamerican can serve shipper from its terminal in Providence, R.I. Shipper wants single-line service to Tex.
5. (681) Charlestown, ...rthur, Ashland, North Easton, and Westwood, Mass.	See shipper under New York heading.			

Summary of evidence of supporting shippers—Continued

MASSACHUSETTS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
6. (DO) The Foxboro Company, Foxboro, Mass. Instrumentation.	From Foxboro (known carrier to Boston, Mass. or Providence, R.I.), to points in Texas and to Baton Rouge, La. During September 1966, shipper moved over 25% shipments to above destinations. Average LTL shipment was 58 pounds.	Texas, Strickland, Johnson, Intercity, T.I.M.E., Merchants, Red Ball, Alamo, Davis, Central, Yellow, Various Airlines, Amero.	Wants faster deliveries. Wants 4-day service.	Johnson, Strickland and several other carriers offer single-line service from Boston to points in Texas. Amero also serves shipper and the latter has no specific complaints. Johnson. Shipper states generally that most two-line services have proven to be unsatisfactory.
7. (RS) (a) Dupel Plastics Inc., Worcester, Mass. Plastic housewares articles. (b) Worcester Toy Company, Worcester, Mass. Toys.	From Worcester to points in Texas, Louisiana, and Mississippi. Ships 2 million pounds a year to points in Texas, 4,630 pounds to points in Mississippi, and 250,000 pounds a year to points in Louisiana. Weight varies from 250 pounds to 5,000 pounds (LTL).	Johnson, ACE, Consolidated, Universal, Republic, Nenala, Transamerican.	Has some difficulty getting pickups. Wants shorter transit time. Roadway refuses to originate this shipper's traffic apparently because of Union problems.	
8. (YM) Bentshire Bathmoy Inc., New Bedford, Mass. Textiles.	From shipper's facilities at New Bedford, Fall River, and Dudgeville, Mass.; Rockford, Del.; Warren and Kenyon, R.I.; Piedmont Valley, N.Y.; and Rockville, Conn., to points in Louisiana and Texas. During September 1966 shipper had 27 movements to points in Texas. Average weight was about 350 pounds.	Roadway, Transamerican, Johnson, Edwards.	Wants better transit time. Applicant's proposal would give 50 percent better transit time.	Johnson. Shipper controls about 50 percent of the shipments.

MISSISSIPPI

1. (CC) Atalanta Corp. Greenville, Miss. Saw blades outbound and flour and bread tools inbound.	From Greenville in LTL shipments to its branch warehouse in Atlanta, Ga. and to points in the United States. Approximately 20,000 pounds moves from Greenville each day with the shipments weighing between 125 and 7,000 pounds. It receives collectively 25,000 pounds a day of inbound shipments from all the points to which it ships. The shipments weigh between 25 and 100,000 pounds. The 100,000 pound shipments are handled by rail. Shipper specified a number of points in Texas, Louisiana, and New Mexico to which it ships. It ships to the points Red Ball serves and proposes to serve.	Gordons transport LTL shipments from Greenville to shipper's branch warehouse at Atlanta in single-line service. Jones is used to Dallas and to Missouri points. Shipper uses the services of Boston, Arkansas-Best, Red Line, Campbell, Roadway, ETSMBC, PIE, and Viking. Additionally, the irregular-route services of Eagle, Osborne, and Superior are utilized.	Shipper wants overnight or second morning service to the Southwest. It does not want its shipments interlined at Memphis or Jackson because it increases transit time by 2 days. Shipper stated that one of reasons for supporting Strickland is to get lower rates. It has a competitor at Shreveport, La.	Red Ball, Strickland, and Jones.
2. (DO) F.W. Rose & Company, Charlotte, N.C. Industrial chemicals and laundry supplies.	Inbound to shipper's branches at Jackson, Miss. and Baton Rouge, La. Furthest shipments move from Boston, Mass.; New York, N.Y.; Norristown and Philadelphia, Pa.; Baltimore, Md.; Washington, D.C.; Atlanta, Ga. and the Carolinas. To the Jackson branch between 60,000 and 70,000 pounds a month is shipped from the area served by Johnson. Baton Rouge tonnage is estimated to be between 50,000 and 60,000 pounds a month from the area Johnson serves. This traffic in both LTL and TL and does not include shipments handled by private carriage.	Shipper handles about 5 percent of its inbound shipments in private carriage. The TL shipments to Jackson move in private carriage or TOFC (Plan III). From Southern origins shipper uses Dixie, Red Ball, and Cole. From New England Associated interlining with Viking or Ryder, and Roadway interlining with Gordons. From Middle Atlantic States, Associated or Atlantic interlining with Viking. Pilot interlining with Harris or Ryder. Carolina interlining with Boston, Nelson interlining with Red Ball or Gordon, N.Y. Crown interlining with West, Roadway interlining with Ryder, and Aime.	Shipper wants single-line service on its inbound traffic. It wants fifth-day service including holidays and weekends. From New England to Baton Rouge and Jackson. Transit time and consistency are important in order to maintain low inventories and properly serve customers. Shipper introduced an abstract of a random selection of 45 shipments made between 10/19/65 and 5/19/66 to show transit times from points on the East Coast to Jackson and Baton Rouge. Weekends and holidays are included in the computation. The transit times shown range as high as 8 days from points in Georgia, South and North Carolina; 13 days from New England, and 23 days from points in the Middle Atlantic States.	Boston and Johnson. Shipper has not made any study of the direct service it is receiving from Ryder to Jackson and Baton Rouge. Shipper has not attempted to use Johnson's service from New England to New Orleans and have a connecting carrier transport the shipments the remaining 90 miles to Baton Rouge. Ryder provides single-line service between Atlanta, Ga. and Jackson. Shipper has had claim problems with Ryder.

...mary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

...pper, ...ation and ...odities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
...(1) ...ower ...ompany, ...

Summary of evidence of supporting shipper—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
7. (147) Mississippi Wholesale Drug Company Jackson, Miss. Drugs, pharmaceutical items, and sundries.	Inbound from Atlanta, Ga. to Jackson. Shipper's busy season for inbound traffic begins in September of each year and reaches its peak in December. During these months its inbound shipments are about 70 percent higher than the other months. Between 1/1/66 and 5/31/66 shipper received a total of 138 inbound shipments from Atlanta, weighing 43,451 pounds. The shipments weigh from a minimum to 5,000 pounds. Usually they are LTL shipments. Shipper experienced an increase in business in the first 5 months of 1966 and expected the increase to continue.	West, Deaton, and Cole. Also, Georgia Highway interlining with Campbell is used. AGX interlining with Campbell, Deaton, or West is used and . United interlining with Campbell is used.	Shipper wants a consistent 2-day or second-morning service excluding Sundays. The receiving shipper wants a consistent 2-day or second-morning service excluding Sundays. The receiving department is open on Saturdays. Shipper wants morning deliveries but it has experienced difficulty in obtaining them from West and Ryder. Time in transit and consistency of service are important because shipper's stock is limited and it is allowed a two percent discount if it pays within 10 days of the invoice date (shipping date). A transit time study of over 150 shipments delivered in the first 5 months of 1966 was introduced. Weekends and holidays were including in the computation. About 110 of the shipments were delivered in 4 or less days with about 40 shipments delivered in 2 days or less. The majority of the remaining shipments were delivered in 5 days.	Red Ball. Shipper indicates that it has a better claim ratio with Red Ball than with any other carrier it uses.
8. (149) Utility Supply Company, Inc., Jackson, Miss. Transformers, rods, nuts and bolts, and pole line hardware.	Inbound to Jackson shipper receives two or three shipments a week from Birmingham, Ala. with a total weight on each shipment of between 4,000 and 10,000 pounds. Occasionally shipper receives inbound shipments from Tucker, Ga. Shipper's business had increased 50 percent in the year prior to the hearing over the previous year and it expected the increase to continue.	West is used. Campbell was used.	Shipper wants a consistent overnight service from Birmingham to Jackson. Time in transit is sometimes important because of emergency situations which result when a tranformer ceases to operate. Shipper has experienced difficulty with Campbell on emergency shipments. It indicates that West is not providing a better service. A Bond is expressed for the proposed overnight service.	Red Ball. Shipper has [illegible] Pa., and is satisfied with its service.
9. (88) Mississippi Bearings, Inc. Jackson, Miss. Bearings, pulleys, pillow blocks, belts, sprockets, and power transmission equipment.	Inbound to Jackson shipper receives movements daily from Atlanta, Ga. The shipments weigh from less than 100 pounds to 600 pounds. Occasionally it receives shipments weighing between 3,000 and 4,000 pounds. The average weight is between 100 and 200 pounds.	Cole, Ryder, Deaton, GFA, West, Alabama-Georgia, and bus service are used from Atlanta to Jackson. Bus service is used for emergency shipments which require overnight service. Cole, West, Ryder, and Deaton render single-line service between Jackson and Atlanta. GFA interlines with West and Mobile, Ala.	Shipper is not satisfied with the service it receives from Atlanta. It expresses a need for second-day service, excluding weekends, on regular shipments. On emergency shipments it wants overnight service. Shipper introduced a transit time study covering 76 shipments which moved between 1/3/66 and 7/14/66. The shipments were handled in single- and joint-line service. A few of the shipments moved from points other than Atlanta. Including weekends about 45 of the shipments were delivered in 4 or less days. On the other hand, delivery sometimes required 6 days (on one shipment from New York which moved through Atlanta delivery required 8 days).	Red Ball. Shipper is not familiar with the single-line or joint-line service available between Atlanta and Jackson.
10. (189) Davis Wholesale Drug Company Jackson, Miss. Drugs, Pharmaceutical items, and sundries.	Inbound from Atlanta shipper receives several shipments a week at Jackson. The shipments weigh from less than 100 pounds to several hundred pounds. Occasionally shipper will receive shipments weighing between 4,000 and 5,000 pounds. The average shipment weighs between 100 and 300 pounds.	Cole, Deaton, Ryder, Campbell, GNT, East Texas, Bonnon, West, GFA, Overnight, and AGX. Cole's single-line service is used in most of the traffic. The joint-line services of AGX interlining with West, Bonnon interlining with West, Bonnon interlining with Brunwell, GFA with Brunwell, GFA interlining with West, and GNX interlining with West, are used. Deaton's and Ryder's single-line service is used.	Eighty percent of shipper's pharmaceutical traffic requires protective service to avoid freezing and about one third of this traffic requires protective service when the temperature is above 95 degrees Fahrenheit. Shipper wants the proposed overnight service from Atlanta to Jackson on 65 percent of its traffic. A transit time study was introduced covering some of the shipments from Atlanta (and from a few other points some of which traffic was routed through Atlanta to Jackson which moved between 1/12/66 and 7/14/66. The shipment were handled in single- and joint-line service. Of the approximately 190 shipments listed delivery was made in 5 or less days in the majority of cases including weekends some shipments had transit times of 8 days.	Red Ball.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Traffic (destinations, volume, type and frequency of traffic)	Existing service utilized	Reason for supporting application	Application supported and remarks
[illegible]	[illegible] to Jackson shipper receives shipments from the Carolinas, eastern Tennessee, and southwestern Georgia. The shipments, ex-[illegible] receive from the southeast and [illegible] the east coast, are received at Atlanta, Ga., or Birmingham, Ala. Traffic moves from Jackson, Tex., and is some of this traffic prospects [illegible] be made at shipper's new Monroe, La., [illegible]. Some of shipper's traffic from the East Coast goes through the Nashville and Memphis, Tenn., gateways	[illegible] Co., Inc., Jacksonville, Tex.; Texas, Pedersen, Pilot, Viking, Red Ball, Dixie, Dependable Express, Watkins, and [illegible]	Shipper wants 2-day service from Leesburg and Grand Prairie, Tex., to Jackson. From Murray Hill, N.J., Cumberland Hills, Maine and Walpole, Mass., to Jackson, Shipper wants not more than 8 to 10 day service. From Cleveland, Ohio, to Jackson shipper expects 4 or 5 day service. Shipper introduced a transit time study on shipments picked at random. Transit times include weekends and holidays. The study indicates that excluding weekends and holidays, Red Ball provided 2-day service in most of the listed shipments from Grand Prairie (Dallas) [illegible] shipments from Cumberland Hills and Walpole shipper didn't know the originating carrier and was unable to review the transit time. Shipper asserts that the existing service is unsatisfactory because of slow transit time.	Strickland. Red Ball promised shipper 2-day service from Grand Prairie.
[illegible]	Inbound to Jackson shipper receives shipments from Atlanta, Ga., and Dallas, Tex. Shipments weigh between 100 pounds and [illegible] pounds	[illegible] Co., Red Ball, West, Pilot, Dependable, Universal, AAA, Mercer, Gordons, and Ryder.	Excluding weekends and holidays shipper wants overnight service from Atlanta and Dallas to Jackson. It also requires deliveries on Saturdays. Transit time is important because the items transported are not always stocked. An introduced transit study shows that during Apr., 1974 (three shipments made during March were included; shipper had 29 shipments all but three of which moved over a weekend. Holidays and weekends were included in the computation of transit time. Six of the shipments moved from Atlanta. They were delivered by Ryder in 3, 4, and 5 days, 24 of 3 days, and by Dependable 5 days. Six shipments moved from Dallas by Red Ball. One was delivered in 3 days, three in 4 days, and two in 5 days	Strickland. Applicant has proposed Saturday deliveries.
[illegible] Water Line Products Corporation, Pass Christian, Miss.; [illegible] shower heads, grooming products such as [illegible] razor movers, rotary filters, [illegible] cycles, and [illegible] magnetic [illegible]	From Indianola between 9/1/65 and 7/31/75 shipper moved 889,000 pounds to Atlanta, Ga., and 194,000 pounds to Birmingham, Ala. About 97 percent of this traffic was [illegible] with the remainder [illegible]. Inbound to Indianola from Atlanta shipper receives [illegible] pounds three times a week. Shipper expects a 25 percent increase in its business in the fiscal year beginning 9/1/75	Concord is used to and from Atlanta and Campbell to Birmingham.	Transit time is important to shipper on outbound traffic because most of its customers carry a small inventory. On inbound traffic transit time is also important because shipper does not maintain a large stock. On LTL shipments to Atlanta it allows 4 days for delivery.	Jones, Jones and Campbell, unlike Jones, do not have a terminal in Indianola. Both of their terminals are located at least 30 miles from Indianola. Shipper was not aware of any other single-line service between Indianola, Birmingham and Atlanta other than Gordons and Campbell and it has not investigated available Jones service. Jones proposed next-day service to Atlanta and overnight service to Birmingham. Shipper has used Jones service and it is described as satisfactory.
[illegible] Electronics Supply, Inc., Jackson, Miss., [illegible] electronic supplies	Inbound to Jackson shipper receives shipments from Philadelphia, Pa., New York, N.Y., Elizabeth, N.J., and West Lynn and North Adams, Mass. Shipper receives about 5,000 pounds a month from primary suppliers in New York City. It receives three shipments weekly from Elizabeth, and at least one weekly from Bronx, N.Y., varying from a minimum to between 4,000 and 5,000 pounds. From Port Washington, N.Y., shipper receives shipments once every 3 months and from North Adams it receives a shipment each month.	Mason-Dixon, Aycor, Pilot, CTX, Watkins, Dixie, and Campbell are used in two- and three-line service	Shipper wants single-line service because present joint-line service increases the possibility of damage and increases the difficulty of tracing. It would like fourth-day service excluding weekends from eastern origins. Time in transit is very important because it cannot adequately stock the involved commodities. Shipper introduced or exhibit showing the transit times on a few of the shipments which moved from eastern origins between 12/1/67 and 1/7/68. Only those shipments which could be fully documented were considered and weekends were excluded. All but 2 of the 23 shipments moved from New York, N.Y., including the Bronx, and Elizabeth, N.J. The transit times were between 1 and 15 days with the average being about 6 days.	Strickland, Watkins and Johnson. Shipper did not know either of the applicants existed until this proceeding began. It has not considered using applicants to originate the traffic and interline it at Atlanta. It did not know how many carriers offer single-line service between New York, Atlanta, and Memphis

Summary of evidence of supporting shippers—(Cont.)

MISCELLANEOUS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applications supported and remarks
15. (306) Principal Bedding Company, Inc. Jackson, Miss. Piece goods, fabrics, mattress bedding, tape, and spring.	Inbound to Jackson shipper receives traffic from North and South Carolina, New York, Georgia, Massachusetts, and New Hampshire. Inbound shipments weigh between 500 and 1,750 pounds each and weigh a total of 1,950 pounds monthly. They move mainly from Piedmont Rapids, Rutherfordton, High Point, Mooresville, Concord, and Greensboro, N.C.; Chesterville, Sumter, Batesburg, Walhalla, Carlisle, and New Berry, S.C.; Augusta, Atlanta, and Commerce, Ga.; New York, N.Y.; Portsmouth, N.H.; and Canton, Mass.	Gardena, Carolina, Seaton, Overnight, Cole, Ryder, Tonson, Roadway, Valu-ser, Brassell, St. Johnsbury, T.I.M.E., Viking, Morvan, Tennessee-Carolina, Rochester, Cape Cod, Auriolr, White and Flying.	Shipper wants second-morning service from Georgia and the Carolinas and two to 4-day service from points in New Hampshire, Massachusetts, and New York. Transit time is important because shipper stays lo inventory low. Shipper prefers single-line service because it facilitates the tracing of shipments. It introduced an exhibit showing the transit times on about 66 percent of the shipments from the involved origins between 12/3/65 and 6/5/66. Weekends are included in the computation. Of the 66 shipments listed, most moved from Carolina points in between 2 days and six days. Shipments from Georgia involved transit times of between 3 lay and 5 days from New Hampshire and Massachusetts the transit times were between 5 days and 11 days. From New York, it is between 4 days and 6 days.	Bowman and Johnson. Johnson and Bowman operated as one agent at its origin points. Neither, however, or some Portsmouth, but Bowman operates interline service from this point. Johnson operates a regular interline service from Canton. Protestants are selected by consignees and shippers only in relation to consignees which [illegible]
16. (307) Rose Point, Miss.	See shipper under South Carolina heading			
17. (312) Greenwood, Miss.	See shipper under Arkansas heading			
18. (329) U S Gypsum Company Dallas, Tex. Sand and fiber wallboard and paint	From its Greenville, Miss. plant shipper moves about 200,000 pounds a month to Dallas, Houston, Tyler, Longview, Waco, Beaumont, Wichita Falls, and other major points in Texas. It also ships from Greenville to New Orleans, Baton Rouge, Shreveport, Alexandria, Lafayette, Monroe, and other points in Louisiana. Additionally, it ships approximately 75,000 pounds a month from its Dallas plant to Greenville	Jones is primarily used. Occasionally, Campbell, Gardena and Seaton are used from Greenville. Jones provides protective service.	Shipper requires protective service (insulated trailers) for its water base paint in order to keep it from freezing. Jones service, essentially is not satisfactory because it does not serve all points in Texas and shipper has experienced trcing problems with this carrier. Shipper has complained to Jones and the service has improved. Occasionally Seaton cannot supply equipment.	Red Ball and Strickland
19. (360) Greenville and Jackson, Miss.	See shipper under Texas heading.			
20. (381) Lindsay Wire Weaving Company Florence, Miss. Steel wire cards, rods and tubs	From points on the eastern seaboard to Florence. From 1/66 thru 9/66 shipper received 28 shipments with an average weight of 300 pounds. From Florence to points in Alabama (one shipment a month), Georgia (one shipment every 3 weeks), Florida (one shipment each month), South Caroline (one shipment every 3 weeks), Virginia (one shipment every 25 weeks), Pennsylvania (one shipment every 7 weeks), New York (one shipment every 2 months). Each shipment weighs about 3,000 pounds.	Cole, Seaton, Shippers, West, Roadway, Moore, Johnson, Viking	Needs faster, more dependable service. Allows lead time of 7 days to Alabama and Georgia points and about 10 days to Florida, Virginia and South Carolina points. Shipper's transit study consists of only those shipments on which it received unsatisfactory service. It shows 19 shipments with a variance of 2 days. Wants 2-day service from Florence to Alabama and Georgia points, 3-day service to Florida, South Carolina and Virginia and less than a weeks service to New York.	Johnson and Bowman
21. (397) Bell Mattress Inc. Jackson, Miss. Textiles	From Rhode Island, North Carolina, South Carolina, Georgia, Virginia, Alabama and New York, N.Y. to Jackson. Receives 50,000 to 60,000 pounds monthly. Average shipment weighs 500 to 1,500 pounds. From 12/3/65 through 5/5/66 shipper had 30 shipments to above areas.	Roadway, Gardena, Ahern, West, TTT, Viking, Strickland, Campbell 66, REX, Mammoth, N.C., Overnite, Cole	Transit time is the time shipper is billed as of date shipment was sent to carrier. Average transit time is 5 days. Times picked at random. Needs 2-day service from Carolinas, 3-day service from Mid Atlantic and 4-day service from New England	Bowman and Johnson
22. (426) American Paper Tube Co. Port Gibson, Miss. ($8 miles west of Jackson). Synthetic paper and phenolically impregnated bobbins for textile industry.	From Lawrence, Mass., to Port Gibson. From Port Gibson to points in Georgia, Alabama, Pennsylvania, North Carolina, South Carolina, Connecticut, New Hampshire, and Tennessee. Inbound shipments range between 363 and 9,440 pounds monthly. Outbound shipments range between 50 pounds and 1,363 pounds monthly.	T.I.M.E., Viking, Red Ball, Southeastern, Gordon, Shippers Express, REX, Roadway, Brodnell, ETSIRC, Overnite, Levine, Ryder, Piedmont, Atlanta Asheville, Jack Cole, Greenwood, Thornton, Montgomery	Ryder accepts only shipments it can handle in direct service and has a two-line restriction in its southern territory tariff. Wants 4-day service inbound, and faster service outbound. Average transit time is 10.5 days on inbound shipments from Lawrence. Shipper generally plans on about 10-day and 14-day service to South Carolina.	Bowman, Johnson. Transit time given does not include all shipments during period.

Summary of evidence of supporting shippers-Continued

MC-65150(SUPP)—Continued

Shipper, location, and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] George E. Anderson Company, Jackson, Miss. Electrical supplies	Inbound to Jackson shipper receives movements from Dallas, Tex. and Atlanta, Ga. The shipments weigh between 10 and 1,500 pounds.	Red Ball, ICA, West, Brosseau, East Texas, and Ryder. Ryder renders single-line service from Atlanta to Jackson, and Red Ball, West, Brosseau, provide direct service from Dallas to Jackson.	Shipper's customers complain about transit time from Atlanta and Dallas to Jackson. They have told him if transit time does not improve they will purchase from shipper's competitors in New Orleans, La., from whom they can obtain overnight service.	Strickland.
[illegible] Overhead Door Corporation, Jackson, Miss. Overhead doors and materials used in the installation thereof.	From Dallas, Tex., to Jackson, Meridian, Greenville, and Gulfport, Miss. Four to [illegible] monthly, ranging between [illegible] pounds.	Red Ball.	Needs faster service. Must now allow a week lead time. Average transit time to Jackson is 5.8 days including weekends.	Strickland. Transit time study represents one-third of traffic received during period.
[illegible] Bett And Corporation, Jackson, Miss. Boots, belts, buckles, screws, and related items.	From Statesville, N. C., and New Britain, Shelton, and Hartford, Conn., to Jackson. About 5 shipments every 2 months ranging between 65 pounds and 2,576 pounds.	Pilot, West, Brookes, Seaton, Campbell, Johnson, Strickland, Carolina, Eastern, Acme.	Needs faster service. Shipper wants 4-day service from Statesville, N. C., and 5-day service from the New England area. Average transit time is 7 days including weekends.	Bowman, Johnson. Shipper has used Ryder's single-line service from Statesville, N. C., but was dissatisfied because of delays. Transit times introduced include all shipments. Johnson. Shipper wants overnight service. Transit study does not include all shipments made during period covered. Strickland. Transit study does not include all shipments during the period in question.
[illegible] Mississippi Envelope Company, Jackson, Miss. Envelopes and household goods.	From Cleveland to Atlanta, Ga., Birmingham, and Montgomery, [illegible]. Monthly shipments of 21 and 27 shipments ranging between 24,000 and 35,000 pounds.	Gordon, Malone, Railway [illegible], T&W.	Needs faster service. Wants overnight service. Average transit time is now 3.9 days including weekends.	Strickland. Transit study does not include all shipments during the period in question.
[illegible] Mississippi Sporting Goods Co., Jackson, Miss. Sporting goods.	From Calhoun, and Rome, Ga., Hickory, N. C., Pulaski, Va., Dothan, Ala., and Austin, Waco, and Dallas, Tex., to Jackson.	Ryder, Braswell, Red Ball, [illegible].	Needs faster service. Average transit time 4 days including weekends.	Strickland. Transit study does not include all shipments during the period in question.
[illegible] Mississippi Stationery Co., Jackson, Miss. Staples, envelopes, travel bags, carpets, desk pads, and other office supplies.	From Atlanta, Ga., Birmingham, Ala., Dallas and Houston, Tex., to Jackson. Between 40 and 60 shipments a month ranging between 21 and 1,000 pounds.	Jack Cole, Ryder, Bowman, West, Campbell, Brosseau, Seaton, Red Ball.	Needs faster, better time coordinated service. Wants overnight service. Average number of days in transit is [illegible].	Strickland. Transit study does not include all shipments moving during the study period.
[illegible] Mississippi Tractor Co., Inc., Jackson, Miss. Agricultural implements and machinery parts.	From Atlanta, and Cedartown, Ga., Charlotte, N. C., and Shreveport, La., to Jackson. Between 8 and 10 shipments a month ranging between 100 and 5,000 pounds.	Jack Cole, Ryder, Red Ball.	Needs faster delivery. Wants overnight service. The only shipment in the introduced transit time study shows 4 days elapsed time from Cedartown to Jackson.	Strickland.
[illegible] Pepsi-Cola Bottling Co. of Jackson, Inc., Jackson, Miss. Cardboard cartons, glass bottles, wooden cases, etc.	From Atlanta, Ga., and Dallas, Tex., to Jackson. Shipments range between 100 pounds and [illegible].	West, Jack Cole, Campbell.	Needs faster service. Wants overnight service. Average transit time is 2.3 days.	Strickland. Shipper testimony indicates that it is only interested in inbound traffic from Atlanta and Dallas. Transit study does not cover all shipments. Bowman, Jones.
[illegible] (MC-988) Brent Marine Supply Co., Greenville, Miss. Chemicals, engine supplies and equipment.	From Atlanta, Ga., to Greenville, Miss. Between one and three shipments monthly weighing about 2,500 pounds.	Dixie, Gordons, Ryder, Seaton, Campbell, Shippers Exp.	Needs faster service. Wants overnight service.	
[illegible] (MC-1590) Cooling-Heating Supply, Inc., Greenville, Miss. Heating and air conditioning equipment.	From Atlanta, Ga., to Greenville and return, from Birmingham, Ala., to Greenville. Between 12 and 16 shipments during summer months ranging between 500 and 600 pounds. Shipments range between 375 and 2,099 pounds.	Ryder, Dixie, Jack Cole, Campbell, Gordons, Seaton, Shippers Exp., DKE.	Joint-line service inadequate. Wants overnight service. Average transit time is 5 days including weekends.	Bowman, Jones. Traffic seasonal. Transit study does not include all shipments during the period.
[illegible] (MC-[illegible]) Metal Trims Inc., Jackson, Miss. Aluminum extrusions, fabrications.	From points in New Hampshire, New Jersey, North Carolina, Pennsylvania, Tennessee, Georgia and Alabama to Jackson. From Jackson to Washington, D. C., North Carolina, South Carolina, Virginia, Georgia, and Alabama. Inbound about 150,000 pounds monthly and outbound about 100,000 pounds monthly.	Campbell, Seaton, Gordons, Viking, West, Strickland, Pike, Akers, MDL, Cooper, Associated, Pilot, Cole.	Joint-line service inadequate. Wants faster transit time. Average transit time from New Jersey, New Hampshire, and Pennsylvania is 22 days, 5½ days from Georgia, 7 days from North Carolina, and 11 days from Tennessee, including weekends. (No figures given for Alabama.)	

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
34. (592). Automotive Warehouse Jackson, Miss. Auto parts	From points in New York, Pennsylvania, Connecticut, Massachusetts and Maryland to Jackson. Monthly TL and LTL shipments ranging between 25,000 and 30,000 pounds.	Akers, Associated, Gordons, Ryder, Carolina, Mason & Dixon, Harrison, McLean, Wm. Penn. Branch, Elkton, Jones, Viking, Deaton, Dixie, Cole	Joint-line service inadequate. Wants faster transit service. Average transit time 5 days including weekends.	Bowman, Johnson. Transit study does not include all shipments during the period.
35. (595) Amana Barber & Beauty Supply Company Jackson, Miss. Cosmetic and other beauty supplies	From Long Island, Bronx, Brooklyn and New York, N.Y., Jersey City, N.J., and Philadelphia, Pa., to Jackson, approximately 40,000 pounds yearly.	Akers, Deaton, Gordons, Mason & Dixon, T.I.M.E. Viking, West, R.C. National Trans. National Carloading Universal	Joint-line service inadequate. Wants single-line for faster service. Average transit time is 7 days, including weekends from all origins.	Bowman, Johnson. Transit time does not include all shipments.
36. (596) Gregory Manufacturing Co. Jackson, Miss. Rubber stamps and marking supplies.	From Jackson to points in Rhode Island, Virginia, Massachusetts, New York, South Carolina, Maryland, New Jersey, Pennsylvania, North Carolina, Connecticut, and Washington, D. C. Daily shipments range between 44 and 900 pounds.	Dixie, Eastern, Gordons, Ryder, Roadway, McLean, Mason & Dixon, Pocono Mammingway Staat, West	Joint-line service inadequate.	Bowman, Johnson
37. (625) Paine Refrigeration Supply Co. Jackson, Miss. Refrigeration and sheet metal supplies.	From Decatur and Atlanta, Ga., to Jackson. Between 10 and 15 shipments a month ranging between 100 and 1,500 pounds.	West, Ryder, Gordons Jack Cole	Needs faster service. Wants overnight service. Average transit time is 4 days, including weekends.	Strickland. Transit study does not include all shipments made during period.
38. (626) Southern pipe & Supply Co., Inc., Jackson, Miss. Plumbing, heating and air-conditioning supplies and equipment	From Atlanta, Ga., and Dallas, Tex., to Jackson. Monthly shipments ranging between 100 and 1,500 pounds.	Ryder, Cole, Dixie, Red Ball, Davis	Wants faster service. Wants overnight service. Average time in transit is 4 days, including weekends	Strickland. Shipper feels that it should receive overnight service from both Atlanta and Dallas. Transit study does not include all shipments during the period.
39. (628) Industrial Supply Co., Inc. Greenville, Miss. Industrial, mill and electrical supplies	From Atlanta and Rome, Ga., Birmingham, Ala., Wilmington, Del., Baltimore, Md., and New Brighton, Pa., to Greenville. Between 25 and 30 shipments monthly, ranging between 500 and 1,000 pounds.	East Texas, Red Line	Needs more consistent service. Wants overnight service. Average transit time is 5 days, including weekends.	Strickland. Transit time presented was selected to show poor transit time, and does not include all shipments during the period.
40. (633) Scovill Manufacturing Co. Greenwood, Miss. Zippers	From Greenwood to points in Georgia, Alabama, Florida, North Carolina, and Kentucky. Weekly shipments range between 120 and 2,379 pounds.	Viking, Gordons, Campbell, Atlantic, Bowman, Dunes, Jones, ETNMC, Taylor, REA, Buses & Airlines	Joint-line service inadequate. Wants overnight service to Georgia and Alabama, second-day service to North Carolina and third-day service to Florida.	Jones, Bowman
41. (639 Lewis Grocer Co. Indianola, Miss. Drugs, notions, beauty aids	From Atlanta, Ga., to Indianola. About 15 shipments weekly averaging 2,920 pounds.	Campbell, Gordons, Viking, Jones, United Georgia Highway, Ryder, Bowman, West	Wants single-line service. Wants overnight service. Average transit time is 6 days, including weekends.	Jones. Transit study does not include all shipments during period covered.
42. (647) Mississippi Refrigeration Company Jackson, Miss. Compressors, electrical motors, chemical solvents.	From Atlanta, Ga., and Birmingham, Ala., to Jackson. Monthly shipments ranging between 170 pounds and 3,000 pounds.	Cole, Ryder, Campbell, Dixie West	Wants faster service. Average time in transit is 5.1 days, including weekends.	Strickland. Transit study only covered about 40 percent of traffic during period.

Summary of evidence of supporting shippers—Continued

APPLICATION NO. MC-[illegible]—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reasons for supporting application	Application supported and remarks
[illegible] (456) Patterson Drug Stores Operating, Nashville, Tenn., drug store commodities.	From Atlanta, Ga., Fort Worth and Dallas, Tex., to Jackson. Between 30 and 40 shipments monthly, approximately 4,000 pounds per shipment.	Cole, Dixie, Ryder, Campbell, Deaton, West, Braswell, Red Ball.	Joint-line service inadequate. Wants overnight service. Average transit time is 4.9 days, including weekends.	Strickland. Transit study does not include all shipments during period covered.
[illegible], (Ethel) Natchez Advertising Service of Jackson, Miss., Insignia and Displays.	From Westminster and Baltimore, Md., to Jackson. Heavy shipments range between 250 and 5,000 pounds.	Mid, Deaton, Ryder, West, Mason & Dixon.	Wants faster service. Wants Delivery in 2 or 3 days service Average transit time is 5 days, including weekends.	Bowman, Jonason. Transit study includes all shipments during period covered.
[illegible] Mayer Bros. Department Store, Jackson, Miss. Dry goods, apparel.	[illegible] Ga., and Dallas, Tex., to Jackson.	Braswell, Cole, Red Ball, Merchants Fast Motor, Deaton, West, East Texas, Ryder, Georgia-Florida-Alabama Express.	Would like faster service. Wants overnight service. Average transit time 5.8 days, including weekends.	Strickland. Braswell and Red Ball can serve shipper from Dallas in single-line service. Transit time only includes three shipments during period with others arrive after hearing.
[illegible] (470) Maxwell Shoe Co. Associated Jackson, Miss. Lighting fixtures.	From Atlanta, Ga., Chattanooga, Tenn., and Mineral Wells, and Dallas, Tex., to Jackson. Approximately 12% shipments monthly.	Ryder, Cole, Dixie Central	Needs faster service. Wants overnight service from Atlanta and Dallas.	Strickland. No preference between single-line and joint-line. Specific tonnage not given.
[illegible] (477) Tilestone Co. Wallboard and tile.	From shipper's facility at Meridian, Miss., to points in Georgia, South Carolina and [illegible] shipments weekly.	Deaton, Dixie Highway, West, Campbell, equipment	Joint-line service inadequate	Bowman. Shipper does have single-line service to some Georgia points. Commodities require flat-bed or conventional equipment. Strickland and Bowman.
[illegible] (Mallard Lockers, Inc., St. Louis, Mo., Cutting lockers (assembled) to storage, grocers.	From shipper's Greenwood, Miss., plant to [illegible], Ga. (24,000 pounds LT. during August 1961), Birmingham, Ala. (22,000 pounds LTL) and points in Florida (24,000 pounds LTL).	Deaton,	Wants single-line service to Atlanta and Birmingham and to Florida using Bowman or Interchange from the above points. Present service to Slow. Wants overnight service to Birmingham and Atlanta. Wants 2-day service to northern Florida and 3-day service to southern Florida.	
[illegible] (Wilkes Refrigeration Company Vicksburg, Miss. Meat, shelving and accessories.	From Wilkes-Barre, Pa. and Atlanta, Ga., to Vicksburg. Receives 5 to 10 shipments a year from Wilkes-Barre LTL weighing 45 pounds. Receives six to seven shipments a year from Atlanta LTL, weighing 250 pounds.	Mid, Red Ba[illegible], Tyner, Ryder, Draper Exp., Cole, Deaton.	Wants overnight delivery to Atlanta and generally faster service. Company is allowing 3 weeks lead time from Wilkes-Barre. Wants 5-day service from [illegible] and overnight service from Atlanta.	Bowman. Deaton can serve Atlanta directly.
[illegible] (773) S.C. Manufacturing, Inc. Vicksburg, Miss. General commodities	From Highpoint (6 LTL a year, 750 pounds), Statesville (6 LTL a year, 750 pounds), and Charlotte, N.C. (1 LTL a month, 2,500 pounds), Atlanta (22 LTL a year), to the above areas. Jonesboro, Ga. (occasional), Birmingham, Ala. (6 LTL a month), and Baltimore, Md. (occasional), to Vicksburg.	Byrd, Ryder, Red Ball, Thurnock, Cole, Bowman, West, ATA, Deaton, Prop. Exp., OTA	Present transit time too long. Wants Bowman's proposed single-line service. Average transit time about 5 days. Wants 2-day service from North Carolina and 3-day service to Georgia and Alabama and 2-day service from Maryland. Wants faster service. Average transit time 7 days including weekends. Wants overnight service to Alabama, Georgia, northern Florida, and South Carolina. 2 days to central Florida, third-day service to southern Florida, and third-day service to eastern seaboard.	Bowman. Present service seems to be adequate. Shipper admits Red Ball's service is good.
[illegible], (897) Meridian Manufacturing Company, Division of Norton Co., Inc. Meridian, Miss. Floor sheets and clothing.	From Meridian to points in Alabama, Tennessee, North Carolina, South Carolina, Georgia, and Florida. Ships daily [illegible], Georgia, and Florida areas. No tonnage given. From points on the eastern seaboard to Meridian. For a 3.5-month period shipper received 61 shipments ranging in weight from minimum to 9,182 pounds.	Bowman, Cole, Campbell, Ryder, West, Dixie, Deaton, McLean, ATA, McGinnis, Tom White, Carolina Brown, A.C.L., Overnite, Falk[illegible]	Present service poor. Cutoff car service is poor. Cutoff car use Bowman interlining with Campbell to all points involved and it indicates their service is good.	Bowman. Shipper is only carrier whose service is poor. Cutoff car use Bowman interlining with Campbell to all points involved and it indicates their service is good.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
12. (817) Also covered.	See shipper under Pennsylvania heading.			
13. (818) General Box Company Du-Pisher, Ill (nesting materials).	From shipper's plant at Meridian to points in Georgia, North Carolina, South Carolina, and Virginia. During 1966 shipper had about 240 shipments to the involved territory, average shipment weighed about 12,000 pounds.	Ryder, Colo., West, Campbell, Dixie.	Want single-line service. Allows 5 to 8 days lead time for involved area. Wants 2-to 3-day service.	Bowman: There are no specific complaints.
14. (832) United States Plywood Corporation ...ware), Miss Hardee dumps.	Shipper wants single-line service from Leakol to Atlanta, Ga. Tonnage ranges between 1 and 3 million pounds a year.	Dixie, West, Bowman, Viking, Akers, Associated, Pilot, Ryder, Campbell, Old Dominion, St. Johnsbury.	Want single-line service to Atlanta Gateway. Allows 10 to Carolina and Virginia points. Wants two- or four-morning service. In 1967 Campbell requested shipper to route its LTL shipments by other carriers	Bowman: Shipper can use many other gateways to deliver goods to the East Coast.

* *SOUTH

1. (40) Springfield, Mo.	See shipper under North Carolina heading.			
2. (116) Springfield, Mo.	See shipper under Georgia heading.			
3. (314) Flip-Top Cup Corporation, New York, N.Y. Paper cups containers, and related paper and plastic products.	(1) From shipper's plant at Springfield, Mo. to Birmingham, Mobile, and Montgomery, Ala.; Chattanooga, Tenn.; Atlanta and Augusta, Ga.; Jacksonville, Tampa and Miami, Fla., Charleston, Columbia, and Greenville, S.C., and Asheville, Winston-Salem, Charlotte and Raleigh, N.C.; (2) From shipper's Augusta plant to Springfield, Mo., Little Rock, Ark.; Jackson, Biloxi, Vicksburg and Meridian, Miss.; New Orleans, Baton Rouge, and Shreveport, La., and Dallas, Fort Worth and Houston, Tex.; and (3) from Holmdel and Hawthorne, N.J. to shipper's plant at Springfield. During 1965, it shipped from Springfield to points in the named destination States 3.9 million pounds, and from Augusta it shipped 6 million pounds. Inbound, from Holmdel and Hawthorne, to Springfield, it ships about 10,000 pounds monthly. About 95 percent of the traffic moved in LTL lots. The LTL shipments average about 1,550 pounds and the TL shipments weigh about 34,000 pounds.	From Springfield shipper uses Campbell interlining with Ryder, Hall, Thurston, and DYANC; T.I.M.S., Campbell; Western Gillette interlining with Huckabee; and Lavoy interlining with Hoover. From Augusta shipper uses Bowman interlining with West; Dixie interlining with Gordons; Johnson interlining with Campbell; Bowman interlining with Red Ball; Huckabee interlining with T.I.M.S., Midwest interlining with Bowman; Spector interlining with Bowman; Johnson; and Spector. Shipper has also used Bowman, Baggett, and Overnight.	Shipper is not satisfied with the transit time it receives from Augusta and the New Jersey points to the Southwest. It wants second- or third-day service, including weekends, or TL shipments from Springfield to points in North and South Carolina. Shipper has commenced using warehouses in Tampa, Miami, and Dallas, but would terminate their use if it received satisfactory transportation service. Transit time is important because shipper's customers have limited inventories. After initially refusing to exempt an interlined shipment from Bowman moving from Springfield to Florida, Tenimi cancelled its concurrence on this traffic. Shipper introduced a transit time study on 44 shipments from Springfield. Transit times are given on 16 of the shipments which moved between 4/21/66 and 7/7/66. Six shipments moved to North and South Carolina. Including weekends, three shipments were delivered in 5 days, one in 6 days and one in 7 days. Seven shipments were delivered to points in Alabama. One shipment was delivered in 2 days. Including weekends, of the other shipments to Alabama, one shipment was delivered in 3 days, two were delivered in 5 days, and one was delivered in 7 days. Including a weekend and a holiday, one shipment was delivered in 7 days and another in 5 days. Three shipments moved to Chattanooga. Two of these were delivered in 4 days, and one, including a weekend, involved 11 days.	Bowman, Johnson and ...ines
4. (952) Sears stores	See Shipper under Texas heading			

Summary of evidence of supporting shippers—continued

Witness for protestant

Shipper, location and products	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] Butler Mfg. Co., Kansas City, Mo., fabricates and distributes petroleum storage tanks	From Kansas City to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. Monthly LTL and TL shipments range between 21 and 30,000 pounds.	Jordan's, Hughes, Watson-Wilson, ICSF, Transcon, CMC, MCF, Delta, Arkansas-Best.	[illegible] inadequate [illegible] between [illegible]	Support. Specific [illegible] against [illegible]
[illegible] Co., Kansas City, Mo., manufacturer of [illegible]	From North Kansas City to points in Alabama, Florida, Georgia and Tennessee. Monthly shipments range between 4, and 45,000 pounds.	Watson-Wilson, Jordan's, Arkansas Best, Hughes, Delta, Southern M.F.	[illegible] assure [illegible] [illegible] service	Support. [illegible]
[illegible] Co., Kansas City, Mo., [illegible]	From Kansas City to Atlanta, Ga., [illegible] ville, Miss., and Birmingham, Ala. Monthly shipments range between [illegible] and 2,[illegible] pounds.	[illegible] M.F.E., Jordan's	[illegible] Existing services have been rendering [illegible]	Protest. General complaints only. Shipper has never tried single-line service, and [illegible] [illegible] [illegible]

Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
17. (711) Hanna Products Company, Plankton, Ark. and Gravette Shellings Company, Gravette, Ark. Black walnut kernels and soft abrasive grit.	From Plankton to Alabama (15 shipments in 1963); Georgia (48 shipments), and Florida (34 shipments). Each shipment averages 500 pounds. From Gravette to same destination points as above. From shipper's warehouse at St. Louis, Mo. to Birmingham, Ala. and Atlanta, Ga.	Russellville or Harley to Springfield, Mo. and interchange with T.I.M.E. to Atlanta and Campbell to Birmingham. Gordons from St. Louis. Campbell and Jones from Gravette.	Interline with as many as three or four carriers. Too much handling of product, which is in cardboard boxes, causes damage. Direct service would speed up deliveries. Wants proposed second day service from Springfield to Atlanta and Birmingham, third morning service from Springfield to northern Florida, and fourth morning to Southern Florida. Wants 2-day service to Magnolia, Ark. Wants 2-day service from Gravette to Atlanta and Birmingham. Wants 2-day service from St. Louis to Atlanta.	Jones and Bowman.
18. (713) Hutchens and Son Metal Products Inc., Springfield and Marshfield, Mo. Freight trailer parts and wheels	From Marshfield to Atlanta, Ga. (8 to 10 shipments a month) and Texarkana, Ark. (1 shipment a week). Each shipment weighs from 800 to 1,500 pounds. Also from Marshfield to Atlanta, and then interchange to points south thereof (10 to 15 shipments a month).	Yellow, Watson-Wilson, Roadway, T.I.M.E., and Campbell to Atlanta by interchange. Campbell to Texarkana (with interchange).	Wants direct service to Atlanta for faster deliveries to Atlanta, and for interchange to points south. Wants 2-day service from Marshfield to Texarkana and Atlanta.	Jones.
19. (714) H.F.A. Packing, Springfield, Mo. Process, boned, and hanging meats	From Springfield to Atlanta, Ga. and Birmingham, Ala. (one or two TL a week). Each load weighs between 35,000 and 42,000 pounds.	Campbell, Watson-Wilson, T.I.M.E.	Has had difficulty getting protestants to provide equipment with rails to transport hanging beef. Wants 2-day service to Atlanta and Birmingham, and 3-day service to Springfield.	Jones and Bowman. Refrigerated equipment is required. All movements in any past were made under government contract. Shipper has not bid on such a contract for over 7 years. It states that if it had appropriate equipment available it would bid on contracts. Bowman.
20. (715) Chemagro Corporation, Kansas City, Mo. Insecticides	From Kansas City to points in Florida. Shipper moves about 1.5 million pounds a year to Florida in mostly TL lots.	Campbell, Transcon, Watson-Wilson, Gordons, Roadway.	Present joint-line service too slow. Wants single-line service to Florida. Wants third morning delivery to Florida on TL quantities and fifth-morning delivery on LTL traffic.	
21. (716) Acme Systems, Springfield, Mo. Binders	From Springfield to points in Alabama, Tennessee, Georgia, North Carolina, South Carolina and Florida. Thirty Orders a week move to this area with each shipment weighing an average of 200 pounds.	T.I.M.E., Roadway, Jones, Campbell, Air Freight, REA.	Wants faster delivery time to its southern area. Allowing 10 days lead time to points in the Southeast.	Bowman and Jones. T.I.M.E. renders single-line service from Springfield to Atlanta.
22. (717) The Marley Company, Kansas City, Mo. Cooling towers	From Kansas City to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. First 6 months of 1964 it shipped to Alabama (68,471 pounds), Florida (76,119 pounds) Georgia (88,856 pounds), North Carolina (136,049 pounds), South Carolina (61,321 pounds), and to Tennessee (about 70,000 pounds). Most are LTL shipments.	Watson-Wilson interlining with Ryder, Toodebunch interlining with Ryder and Central. Mail from Olathe, Kans. to Kansas City. Bowman over Atlanta gateway to Florida. Roadway interlining with Ryder and Central.	Faster service. Ease of tracing shipments in single-line operation. Damage less likely in single-line service. Average transit time is 4 to 7 days. Wants third or fourth morning delivery to the southeast.	Bowman.
23. (718) Hare Transportation Inc., Kansas City, Mo. Common Carrier	Due to a difference in equipment T.I.M.E., Transcon, Gordons, Campbell, Watson-Wilson, Yellow Transit and Roadway cannot interline with Hare. But Hare can interline with Jones. Hare operates generally between Kansas City and points in portions of Colorado, Oklahoma, Nebraska, and Kansas.		Wants to interline with Jones at Kansas City.	Jones. Primarily a liter. hauler.
24. (719) Cargo Inc., St. Louis, Mo. Clothing and shoes	From St. Louis to points in Florida through the Atlanta gateway. Ships 10,000 to 12,000 pounds in LTL lots a week to points in Florida.	T.I.M.E., Gordons, Ryder, MD & D.	Present service is too slow. Wants second morning delivery from St. Louis to Atlanta.	Jones. Never tried services of Watson-Wilson, Roadway, T.I.M.E. and Campbell. Shipper states that Roadway does not want to handle its traffic. Bowman.
25. (721) Lee's Bronzer, Kansas City, Mo. Wool and synthetic piece goods	From Conyers, S. C. to Kansas City. Traffic averages about 2,000 pounds a month. Each shipment weighs about 700 pounds.	Watson-Wilson by using Charlotte, N. C. and St. Louis, Mo. gateways.	Wants faster delivery service on inbound movements. Wants third day service to Kansas City.	
26. (722) Wool Motor Company, Wool, Mo. Motor sales	From Birmingham, Ala. to Wool. Ships about 200,000 pounds annually.	Shipper indicates that it uses all existing services.	Needs scheduled job site deliveries. Wants 2-day service from Birmingham.	Jones. Need for transportation of the involved commodity only estimated through 1971. Never tried Campbell's single-line service from Birmingham.

Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (733) Elder Manufacturing Company, St. Joseph, Mo. Piece goods	From points in Alabama, Georgia, North Carolina and South Carolina to shipper's plants at Webb City and Carl Junction, Mo. Receives about 400,000 pounds a year.	McLean interlining with Jones, and Youngblood with A & N and Jones	Wants faster service in a two-line Jones and Bowman operation. Average transit time is 5 to 6 days, including weekends. Wants proposed 2-day service from the Atlanta gateway to Webb City and Carl Junction, and 2-day service from Carolinas, Georgia and Alabama to Springfield, Mo., at which point traffic will be interlined to shipper's plants.	Jones and Bowman. Can presently obtain a two-line Jones-Bowman service over Memphis gateway. It also appears that Roadway can provide a single-line service. The proposed operation of Jones and Bowman would satisfy shipper's long-haul needs with relatively short hauls at either origin or destination.
		NEW HAMPSHIRE		
[illegible] (688) Nashua Corporation, Nashua, N.H. Paper items	From Nashua, N. points in Texas, Louisiana and Mississippi. Ships approximately 2,2 million pounds a year to points in above States.	Strickland, Arma, Roadway, Consolidated	Only has two carriers going to its most important marketing area. In early [illegible] of a third carrier because of delays in transportation shipper has suffered losses under penalty clauses. Shipper is not receiving satisfactory service from interline carriers.	Johnson, Roadway has refused to handle shipments. In parts Roadway and Strickland have authority to serve most of the destination points requested. Witness could cite only one specific instance of delay.
		NEW JERSEY		
[illegible] (697) Wharton, N.J.	See shipper under Georgia heading.			
[illegible] (572) Bound Brook and Princeton, N.J.	See shipper under Connecticut heading.			
[illegible] (688) Deluxe Topper Corporation, Elizabethport, N.J. Toys	From shipper's facilities at Elizabethport and Plainfield, N.J., to El Dorado, Jonesboro, Little Rock, Pine Bluff, and Texarkana, Ark.; Columbus, Greenwood, Hattiesburg, Meridan, Vicksburg, Greenville and Jackson, Miss.; Dayton, Beaumont, Dallas, Fort Worth, Garland, Greenville, Houston, Longview, Orange, Texarkana, Tex., and Baton Rouge, Monroe and Shreveport, La. Ships about 2 million pounds a year to above points 75 percent of tonnage went to points in Texas. Ships TL and LTL. Weight range is 300 to 12,000 pounds. Average is about 3,000 pounds.	Bowman, Transcon, Johnson, A.B.C., T.I.M.E., Roadway and Mason-Dixon.	Present service too slow. Wants direct service to Texas. Allow 10 to 14 days real time. Wants fourth-morning delivery on TL and sixth-to-seventh morning delivery on LTL to points in Texas and Arkansas. Wants third morning delivery on TL and fifth morning delivery on LTL to Mississippi, and Louisiana points. Shipper unable to obtain pickup service from any carrier that offers direct single-line service to points in Texas. T.I.M.E. informed shipper that it could not handle its freight.	Bowman, Johnson indicates that it takes from 10 to 14 days to transport toys to the involved points. Bowman and Johnson can presently serve shipper by interlining at Birmingham, Ala., or Memphis, Tenn.
[illegible] (867) RSR Division, Shark Industries, Inc. Morristown, N.J. Welding equipment	From Morristown to points in Louisiana, Texas, and Mississippi. Ships about 450,000 pounds a month to points in the above States. Last LTL shipment weighs about 800 pounds.	Johnson, Roadway, Fillius Universal, T.I.M.E., Red Ball Central and Sale	Present transit time is too long. Wants single-line service so as to cut down on transit time.	Johnson. Johnson can serve most points by interlining. Shipper or else use a local carrier to Philadelphia and there interline to points involved. Some carriers offer single-line service to some points involved herein.
[illegible] (895) Warner-Chilcott Division of Warner-Lambert, Morris Plains, N.J. Drugs	From Morris Plains, to points in Louisiana, Mississippi, and Texas. Ships 450,000 pounds (LTL) to points in the above States each year. Shipments range from minimum of 1,000 pounds. Average shipment weighs 890 pounds.	Acme, Texas, Strickland, Johnson, Trenway, Cole Mason, REA, Yellow, Mitchell, Gee Lord, Watro, McClean, and Roadway	Wants consistent service and fast transit time because its customers do not keep a large inventory. Having tracing problems. Wants protective service for freezable items during the winter months.	Johnson. Consolidated service feasible to Houston and Dallas has not been tried.
[illegible] (919) Monroe International, Inc., Division of Litton Industries, Inc., Orange, N.J. Adding machines	From Orange to points in Louisiana, Mississippi and Texas. During 1966 shipper had in excess of 250 shipments to points in the involved territory. Average weight is 300 pounds.	Roadway, Republic, Cole, Universal, Johnson, Mason, and Harris	Wants better transit time.	Bowman, Johnson. We agree. Plan given involving transit time. Shipper admits that Roadway gives good single-line service to points in Texas.
[illegible] (821) Continental Copper & Steel Ind., Inc., N.Y., N.Y. Copper and aluminum wire	From shipper's plants located at Hillside and Linden, N.J., to points in Arkansas, Louisiana, and Mississippi. Shipper will ship 90,000 pounds a month to Arkansas, 90,000 to 90,000 pounds to Louisiana, and 60,000 pounds to Mississippi. These would be TL shipments. LTL shipments move to Arkansas (14 to 20 shipments a month), to Louisiana (35 shipments a month), to Mississippi, (20 shipments a month), and to Texas (15 shipments a month). Each LTL shipment will weigh from 1,200 to 2,000 pounds.	Strickland, Bowman, and Alyre	Desires single-line service. Transit time on LTL shipments is poor. Having difficulty with Strickland in picking up freight. Wants 3-day service from New Jersey on TL and 5-day service on LTL. Roadway has refused some shipments.	Bowman, Alyre can render direct service to most points. Many carriers can serve destination territory by interlining at Memphis. This service has not been tried.

Summary of evidence of supporting shippers—Continued

NEW JERSEY—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Applications supported and remarks
8. (933) Boonton, Dickerson & Co., East Rutherford, N.J. Medical supplies	From East Rutherford, N.J., to points in Texas, Louisiana, and Arkansas, viz.: From November 1966 to January 1967 shipper had 7-10 shipments weighing a total of almost 10,000 pounds.	Various	Wants single-line service.	Johnson, Bonner: Shipper has no specific complaints. Hardway & Strickland: offer single-line service to Texas destinations. Ryder and Harris-Tom serve shipper to Louisiana points.
9. (934) A.B. Murray Co., Inc., Elizabeth, N.J. Pipe and tubing	From Elizabeth to points in Arkansas, Louisiana, Mississippi, and Texas. Shipments weigh from a minimum to 70... No tonnage figures given.	T.I.M.E., Jenkins, Cole, ABC-Midland, Watson, Strickland	Has many pick up service. Allows 5 to 6 days to destination points. Wants 1-day service to Arkansas, Louisiana and Mississippi.	Strickland, Watson, Inc.: Volume figures given. Interstate commerce data are required.
1. (--) Albuquerque and other points in New Mexico	See shipper under Texas heading.	NEW MEXICO		
1. (87) New York and Rochester, N.Y.	See shipper under Georgia heading	NEW YORK		
2. (179) Pearl River, N.Y.	See shipper under Connecticut heading.			
3. (861) Fairhaven Candy Co., Brooklyn, N.Y. Candy. (Kinnerkoff's Candy Co., Charlestown, Mass. Candy (Kimmerol Wholesale Supply Co., Waltham, Mass. Appliances (Fairhaven Bolt & Screw Co., Oakland, Calif. Bolts and screws (Polymerics, Inc., North Eastern, Mass. Fabrics, papers, and boards. (Flite Control Corporation, Watertown, Mass. Light fixtures	From shippers' facilities at Brooklyn, N.Y., Charlestown, Waltham, Oakland, North Eastern, and Watertown, Mass., to Atlanta and from Atlanta to points in the Southeast. All shipments are LTL. No tonnage figures given.	Cole	Wants faster service.	Strickland. Shipper has never had any specific complaints with regard to existing services.
4. (--) Dryenberg Manufacturing Company, Division of Fairbanks Company, Dryenberg, N.Y. Fiber pipe and conduit, plastic pipe and coils	From Dryenberg, N.Y. to points in Texas, Arkansas, Louisiana, Mississippi. Ships about 1,000,000 pounds a year to points in involved destinations. Some shipments are TL and others are LTL.	Coker, T & P, Transamerican, Revels, Haslam, Malone, Hodnett, Decker, Red Ball, Roadway, T.I.M.E.	Needs the services of a motor carrier which will interline or provide a single-line service using flat-bed or convertible equipment. Allows 10 days load time to points in Texas, Louisiana, and Mississippi, 7 days allowed to Arkansas points. Wants 3-or 4-day service to points in Texas, Arkansas, Louisiana, and Mississippi	Bonner. Shipper has had some difficulty obtaining proper equipment. Some will not interline with flat-bed equipment. Shipper would have no difficulties if Bonner would permit its trailer to continue beyond the interchange point. Shipper needs flat-bed equipment.
5. (926) Pleasant Valley, N.Y.	See shipper under Massachusetts list.			
1. (88) Thomas Industries of Statesville, N.C., New York, N.Y. Chairs	From Statesville to points in Louisiana, Mississippi, and Texas in addition to the points listed below. Shipments move almost daily to points in these three states and shipments to Dallas, Tex., move at least two or three times a week. Shipper has between 6 and 12 movements a year to each of 6 specified points in Arkansas with each shipment weighing about 600 pounds, except to Pine Bluff to which it has about 25 shipments a year with an average weight of 600 pounds. It ships between 40,000 and 50,000 pounds a year to Kansas City, Kans., and between 30,000 and 35,000 pounds a year to Topeka, Kans. Fifteen thousand pounds is shipped each year to Baton Rouge, La., and 10,000 pounds is shipped to Shreveport, La., annually. Approximately 50,000 pounds is shipped each year to a specified Mississippi points, principally Jackson, Vicksburg and Columbus. It has a small number of shipments to Carthage and Springfield, Mo. Approximately 100,000 pounds a year is shipped to Texas with between 20,000 and 25,000 pounds moving annually to Dallas and Fort Worth, Tex. About 75,000 pounds is shipped each year to Houston, Tex., most of the chairs are crated.	NORTH CAROLINA T&I is used to points throughout the destination territory to Kansas, Central Georgia (no traffic to Chicago where it is interlined. To points in Louisiana, Ryder and Bowman with connecting carriers, except to points served directly by Ryder, to Mississippi Bowman and Ryder with connecting carriers. To Missouri, Central and Bell with connecting carriers. To Texas, Ryder, Thornton, Transamerican-Carolina, and East Tennessee with connecting carriers.	Shipper desires a direct single-line service to the named destination points to assure the provision of a through service eliminating the problem of return shipments where interline connections are not available. Also it feels that this type of service would simplify tracing, expedite movements, and enable it to expand the territory it serves. Shipper expects 3- to 4-day service to Arkansas and Kansas; 3- to 5-day service to Louisiana and Mississippi; and 3- or 4-day service to Missouri and Texas.	Bonner, Johnson and Jones. For a period, Ryder would not handle shipper's traffic.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
2. (32) Collins Furniture Company, Statesville, N. C. Furniture	From Statesville shipper has 1,000 pounds a month to Little Rock, Ark., with other shipments to other specified Arkansas points, 5,000 pounds a month to Kansas City, Kans., 1,000 pounds a month to Topeka, Kans., 1,500 pounds a month to both Baton Rouge and Monroe, La. 2,000 pounds a month to Shreveport, La., 3,000 pounds a month to Jackson, Miss., 1,000 pounds a month to Beaumont, Tex., 6,000 pounds a month to Dallas, Tex., 3,000 pounds a month to Fort Worth, Tex., and 5,000 pounds a month to Houston, Tex. Shipments vary from maximum weights up to 2,000 pounds. The furniture is crated.	Acme is used on most shipments to Texas, Mississippi, Missouri, Kansas City, Topeka, Arkansas, and Louisiana. Thurston, interlining at Memphis with delivering carriers also handles Arkansas traffic. Ryder handles some of shipper's Louisiana traffic. Thurston also originates shipments to Louisiana.	Shipper desires second day service to the destination points. The existing service is not satisfactory. Occasionally, Thurston will not be able to interline a shipment and must return it. It has had complaints of slow deliveries with Ryder.	Bowman, Johnson and Jones. Roadway does not handle shipper's traffic to points in Texas. Shipper uses Bowman and Johnson and is satisfied with the service rendered. It has never used the services of Jones. Thurston's service is described as satisfactory. Shipper has never routed its Arkansas traffic by Thurston-Jones through Memphis, Tenn. Shipper has never used Ryder's service from Statesville to Houston, Beaumont, Baton Rouge, or Jackson.
3. (33) Shaw Manufacturing Company, Charlotte, N. C. Furniture	From Charlotte shipper has movements to specified points in Arkansas, Mississippi, Florida, Kansas, Missouri, Alabama, Louisiana, and Texas. Between 100 and 200 shipments move from its plant to unspecified points each day.	Acme, a freight forwarder it used to points in Arkansas Tennessee Carolina interlining with T.I.M.E. at Nashville, Tenn., handles shipper's traffic to points in Kansas. Johnson or Thurston handle shipper's Louisiana and Mississippi traffic. The Mississippi traffic is delivered by connecting carriers Acme or T.I.M.E. handle the Missouri traffic. Acme handles the Texas traffic. Haley Pool cars also handle shipper's traffic to Arkansas and Texas.	Shipper indicates that it does not have a single-line service from Charlotte that it can use. The pool car service is not satisfactory because shipments must be accumulated until they are sufficient in number to fill out a railroad car thereby causing delays.	Bowman, Johnson and Jones. Although Roadway may hold pertinent authority, shipper indicates that it refuses to accept furniture Thurston's single-line service to New Orleans is described as satisfactory. Shipper was not aware that Jones could serve Kansas, Missouri, and Arkansas points in two-line service. Jones does not propose to serve Charlotte. Ryder's service has been used to points other than those involved but this carrier renders slow pickup service. T.I.M.E. serves many points in Texas on single-line service from Charlotte.
4. (37 Statesville Chair Company, Statesville, N. C. Chairs	From Statesville in 1965 shipper had LTL movements to Kansas City, Kans. (8,500 pounds), Kansas City, Mo. (10,750 pounds), Topeka, Kans. (2,900 pounds), Baton Rouge, La. (5,300 pounds), Monroe, La. (2,400 pounds), Shreveport, La. (7,900 pounds), Baytown, Tex. (3,300 pounds), Beaumont (2,200 pounds), Dallas (24,900 pounds), Fort Worth (3,200 pounds), Houston (5,100 pounds), Galveston (1,500 pounds), and Pasadena, Tex. (1,500 pounds). Additionally, shipper has movements to named points in Arkansas, Mississippi, and Missouri.	To Kansas, ET & WNC originates the traffic and interlines with Campbell at Memphis, Tenn. To Louisiana, Valiant, a furniture carrier, is used. To points in Texas shipper uses freight forwarders and furniture carriers. To Mississippi shipper uses Bowman interlining at Memphis. Thurston and ET & WNC originate shipper's Missouri, Mississippi, and Arkansas traffic. Johnson is used in single-line service to some Louisiana points.	Shipper wants direct single-line service to all of its destination points. It desires 2- or 3-day service to Arkansas and Mississippi, 5- or 6-day service to Kansas, Louisiana, Texas, and Missouri. Freight forwarder service is not satisfactory because of the delays due to the need to accumulate freight. Valiant's service is not satisfactory because it is difficult to get it to make pickups.	Bowman and Johnson. Shipper was not aware of whether Johnson could [illegible] single-line service, some of its shipments to Louisiana.
5. (38) Reeves Bros., Inc., Curon Division, Cornelius, N. C. Foam plastic	From its Cornelius plant and its Charlotte, N. C. warehouse, shipper moves two shipments a month to both Little Rock and Jonesboro, Ark., with each shipment weighing between 150 and 500 pounds, one shipment a month to Hattiesburg, Jackson, Laurel, and Meridian, Miss., with each shipment weighing between 200 and 400 pounds, one TL shipment a month to Columbus, Miss., transported in customer's vehicles, one shipment every 2 weeks to Kansas City, Mo., weighing between 800 and 2,000 pounds, one shipment a month to Baton Rouge, Shreveport, and Monroe, La., with each shipment weighing between 200 and 400 pounds, two shipments to both Dallas and Houston, Tex., with each shipment weighing between 400 and 1,000 pounds.	Dixie, Hennis, and Johnson originate its traffic. To the Arkansas points Dixie originates the traffic and interlines at either Atlanta or Savannah. Dixie and Johnson originate shipper's Mississippi traffic. Roadway and Hennis handle shipper's Missouri traffic. Hennis must interline the traffic. Johnson and Dixie handle shipper's Louisiana traffic. Dixie originates shipper's Texas traffic.	Shipper wants single-line service. Ryder does not make regular pickups at shipper's plant. Roadway asserted it is not rendering a satisfactory pickup service. Shipper does not feel that joint-line service is satisfactory because of the problem of tracing and 1 day transit time is lost for every interline. Shipper has a competitor in Texas.	Bowman, Johnson, and Jones. Ryder holds single-line authority from the two North Carolina points to points in Mississippi and Louisiana, and Roadway can handle shipper's Kansas City traffic in single-line service. Ryder and Roadway serve Texas points in single-line service. Jones is not seeking authority from Cornelius or Charlotte. It would interline with either Bowman or Johnson if its application is granted. However Bowman and Jones can presently provide this service but shipper is not utilizing this routing.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
8. (96) Hayes Corporation, Dayton, Ohio. Rubber and plastic products outbound and fabrics, cards and yarn inbound	Outbound from shipper's Waynesville, N.C., plant and its Asheville, N.C., warehouse traffic moves to specified representative points in Arkansas, Louisiana, Mississippi, Missouri, and Texas. Shipments to these points aggregate approximately 7,500 pounds daily. Outbound from shipper's Springfield, Mo., plant traffic moves to specified representative destinations in Florida, Georgia, and North and South Carolina. Shipments to these points aggregate about 3,000 pounds daily. Inbound to the Springfield plant shipments move from specified representative points in Georgia and South Carolina. To the Waynesville plant shipments move from Baton Rouge and Lake Charles, La. Inbound shipments to Springfield aggregate approximately 300,000 pounds monthly and move in box car, TL and LTL service. To Waynesville inbound shipments aggregate between 40,000 and 50,000 pounds monthly and move in TOFC, TL and LTL.	Roadway handles shipper's traffic in single-line service from Asheville to Dallas and Houston, Tex. One of two named carriers originates traffic at Waynesville and interlines with Roadway at Asheville. ET & WNC serves Waynesville daily from its Asheville terminal. It handles shipper's Arkansas and Southwest traffic. ET & WNC originates shipper's Louisiana traffic and interlines with Harris at Memphis. Also Atlanta-Asheville originates this traffic and interlines with Johnson at Atlanta. ET & WNC originates the Mississippi traffic and interlines with Campbell. Also, Atlanta-Asheville interlining with Johnson handles this traffic. To Texas, Blue Ridge originates Waynesville shipments and interlines with Roadway at Asheville. Also, ET & WNC originates the traffic and interlines it at Memphis with either Gordons or East Texas Atlanta-Asheville also originates this traffic and interlines at Atlanta with Transcon. Inbound to Waynesville from Baton Rouge and Lake Charles shipper is using Harris to Memphis and ET & WNC to Waynesville. Pyaw to Atlanta, T.C.T.O. to Asheville, Blue Ridge and Pyaw to Asheville and CSPE to Waynesville. Between Waynesville and Springfield shipper uses ET & WNC interlining at Memphis with Western Gillette. From Springfield to Florida shipper uses Campbell interlining with Pyaw at Birmingham; and T.I.M.E. with Central at Atlanta. To Georgia, T.I.M.E. to Atlanta and connecting carriers beyond. Roadway is used on shipments to Georgia and North Carolina. To South Carolina from Springfield Western Gillette interlines at Memphis with Thornton.	Shipper wants 2- or 3-day service on LTL shipments and 2-day service on TL from Waynesville to points in Arkansas. From Waynesville and Asheville to Louisiana points, shipper wants 2- or 3-day service on LTL and 2-day service on LTL To Mississippi from Waynesville and Asheville shipper wants 2- or 3-day service. To Texas points shipper wants 3-day service from Waynesville and Asheville. Shipper introduced an exhibit dealing with inbound shipments to Springfield and with shipments from Springfield to Waynesville. During the first 4 months of 1964, 89 (only a portion of the total inbound shipments to Springfield) shipments to Springfield) shipments from designated southwestern States weighing from 35 to 36,345 pounds requiring transit times between 3 and 18 days. Between 12/27/63 and 4/23/64, 32 (about 90 percent of the total traffic) shipments weighing between 731 pounds and 24,000 pounds requiring between 3 and 10 days transit time moved from Springfield to Waynesville Shipper wants 2- or 3-day service on inbound shipments from Louisiana to Waynesville. On intrastate movement between Springfield and Waynesville, shipper wants 2- or 3-day service. Roadway's service outbound from Springfield is described as inconsistent. If the Bowman and Johnson applications are granted shipper will divert traffic from its Atlant warehouse to Springfield. Eventually, it hopes to close its Atlanta warehouse and ship from Springfield This move would increase transit time to many points but it would allow shipper to be better able to supply its customers with the items they request.	Bowman, Johnson and Jones. Bowman serves shipper at Waynesville and Asheville. Johnson's services are used at Asheville. Shipper indicates that there is no single-line service from Waynesville Approval of the applications would not affect motor carrier service from Springfield to Mississippi, Louisiana Alabama, and Memphis, Tenn.
9. (79) Statesville and Old Fort, N.C.	See shipper under Massachusetts heading			
9. (125) Thayer Coggin Institutional, Inc. and Jasper, Inc., High Point, N.C. Furniture	From High Point to points in Texas such as Dallas, Houston, El Paso, Corpus Christi, Lubbock and San Antonio. During a 12-month period it shipped 270,000 pounds into Texas of which 45,000 pounds moved to Dallas. The shipments are both TL and LTL. Shippers also have movements to Shreveport and Baton Rouge, La. During a 3-month period ending 3/30/64, 76 shipments weighing a total of 17,000 pounds moved to Dallas; 66 shipments weighing 14,000 pounds to Houston; 61 shipments weighing 13,000 pounds to Fort Worth, 7 or 8 shipments weighing 2,000 pounds to Shreveport; and 4 shipments weighing 700 pounds to Baton Rouge. About 70 percent of shippers' traffic to Texas moves by pool rail car	Shippers use two Furniture consolidators, Daily and Security Warehouse. Also Acme, a freight forwarder, is used and Shepard, a furniture carrier is used. ET&WNC was used but its contract carrier service refused to accept furniture shipments. Old Dominion handles shippers' traffic from High Point to Charlotte for loading by Acme	Shippers allow for 10- or 12-day service to the named destination points. Roadway and Pyder hold single-line service between the involved points but Roadway will not transport set-up furniture and Pyder's pickup service is described as poor. Shippers express a need for Johnson's proposed second-morning service to Dallas	Johnson and Bowman. Johnson holds authority to serve High Point but it is not being used as an originating carrier. Shippers are supporting Bowman on an interline basis to Texas. They would use Johnson from High Point and the shipments would be interchanged with Bowman at an unspecified point.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, etc.	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible] South Kew Prestcliff Company, Div. of North American Rayonier Corporation, Sodyeco, N.C. Prestcliffe in Texas and in Utah	From Sodyeco during 1964, shipper moved 18,980 pounds (314 drums) to McKinney, Tex., 51,926 pounds (56 drums) to Waco, Tex., and 97,400 pounds (168 drums) to New Braunfels, Tex.	Roadway interlines at Dallas on shipments to the three Texas points. Akers single and joint line services have been utilized. Ryder handles shipper's traffic from Charlotte, which is about 12 miles from Sodyeco. ETSWC, Morris, Thurston, Red Ball, Southern, Roadway.	Shipper indicates that his commodity is subject to freezing at temperatures below 32 degrees Fahrenheit. Roadway has not assured shipper that its shipments will be protected from the cold. Johnson has assured shipper that it would provide a protective service to the points of interchange, namely Dallas or Houston, Tex. Wants faster deliveries and single line service to Texas points.	Bowman and Johnson. Shipper is reasonably satisfied with the protective service rendered by Akers. It has not had any complaints that its product froze on shipments handled by Roadway during the winter months without protective service. Bowman and Johnson. Shipper has not tried existing interline service at Memphis. Never used the service of Bowman to Texas points. When Roadway has equipment available, it renders good service. Johnson, Bowman, and Roadway.
[illegible] Corporation, [illegible], N.C. [illegible] Company, Hickory, N.C. [illegible] Transformers	From Hickory to Dallas (1,753,000 pounds in first 8 months of 1964) and Houston, Tex. (1.1 million pounds). Average weight of each shipment is 18,500 pounds.			
[illegible] Corporation, [illegible], N.C. [illegible] Fibers [illegible] Fibers [illegible] Bags, and [illegible] Cases	From Asheville to points in Mississippi, Arkansas, and Texas. Approximately 15 million pounds move annually.	Robinson, Texas Carolina, Ryder, Red Ball, Campbell, Roadway, Texas, Akers, Viking, Gordons, Delta, Campbell, Freeman, Phillips, Ship Express, Thurston, Southern R. R.	Need faster, more consistent service. Average transit time about 5 days excluding weekend. Wants third morning service to all points.	
[illegible] Company, Greensboro, N.C. Fabricating Machines [illegible], 1554, Humble Oil and Refining, Houston, Tex. Petroleum products	From Greensboro to points in Texas. Shipments range between 30 and 35,000 pounds TL and LTL shipments.	Akers, N. C., East Texas, Thurston, Roadway, C & H Trans., Bell Trans., Morris, Thurston, Standard, Republic.	Needs faster service. Wants second-morning service on TL shipments, and between 3- and 4-day service on LTL shipments.	Bowman and Johnson.
[illegible], 1548, Paving and Mixer Co., Greensboro, N.C. Fabricating Machines [illegible], 1554, Humble Oil and Refining, Houston, Tex. Petroleum products	From shipper's Charlotte, N.C., plant to points in Arkansas and Louisiana, and from shipper's plants at Baton Rouge, La., and Baytown, Tex., to points in North and South Carolina, Georgia and Florida. To Arkansas and Louisiana about 40 shipments totaling 9,454 pounds moved between January and July 1964. From Baton Rouge shipper expects to ship between 20,000 pounds and 40,000 pounds for any given 7-month period to the involved destination States. From Baytown 40 shipments totaling 244,241 pounds moved between 1/1/64 and 8/7/64 to the involved destination States.	Tennessee-Carolina, Roadway, Bowman, Johnson, Red Ball, Deaton, South western, Western Tillotte, Garrison, Mercury, SAIA, Jones, Red Line, Powell-Allen, Viking, Pilchwalsh, Ryder, Morris, Tamami, Overnite, Dixie Highway, Merchants, Smith, Waters, East Texas, Carolina Marshall.	From Baton Rouge and Baytown shipper wants third-or fourth-day service to Florida into Georgia, North and South Carolina shipper wants second-day service from Baton Rouge and second- or third-day service from Baytown. Shipper generally states that it is not altogether satisfied with service to Arkansas and Louisiana. Average transit time from Baton Rouge is 3 days to Florida, 4 days to South Carolina, and 7 days to Georgia including weekends. From Baytown to Florida, it is 5 days, to North Carolina 6 days, to South Carolina 11 days. (Average transit time not given to Arkansas and Louisiana.)	Bowman, Johnson, and Roadway.
[illegible], 1570, Mill points of shipper [illegible], 1619 Southern Papers, Inc., Charlotte, N.C. Shipping Bags [illegible], 6521 Lands, N.C. [illegible] Neal W. T. Grant Company, New York, N. Y. General commodities	See shipper under Georgia heading.			
	From Charlotte, to points in Mississippi, Arkansas, Texas, Louisiana, and Kansa[illegible] Monthly shipments [illegible] and 50,000 pounds.	Bowman, Ryder, ET & WNC, Red	Needs faster service. Wants second-day service to points in Mississippi and Louisiana, and third morning to Texas points.	Bowman and Johnson.
	See shipper under South Carolina heading.			
	From shipper's consolidated center at Charlotte, N. C., and from points in North and South Carolina, Georgia, Virginia, Maryland and Tennessee, to points in Arkansas, Kansas, Louisiana, Mississippi, Missouri and Texas. About 1,600 pounds moves a month from Charlotte to each of the destination States involved, and about 450,000 pounds moves annually from Charlotte to Texas points alone. From the Carolinas collectively about 2,500 pounds moves to Texas monthly. From Georgia, about 5,000 pounds moves to Texas monthly from Virginia, about 2,000 pounds moves to Texas monthly. From Maryland and Tennessee collectively, about 1,500 pounds moves to Texas monthly. About 1,000 pounds a month from above origins collectively and about 1,500 pounds from Charlotte a month moves to the other destination States collectively.	Bowman, Johnson, New Dixie, Georgia Highway, A.C.N.E., Lone Star, ETSWNC, Southwestern, Strickland, East Texas, Gillette.	Wants second-morning service from Charlotte to involved destination States and faster transit time from and to other involved points. Average transit time to Texas points is 7 days including weekends, from Charlotte, and 5 6 days to Arkansas points from Charlotte, including weekends (Average transit time from and to other points not given.)	Bowman and Johnson. Transit study includes all shipments during period covered.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
18. (650) A. M. L. Corp., Charlotte, N. C. Cleaning compounds	From Charlotte to points in Mississippi, Louisiana, and Texas. Weekly shipments range between 1,500 and 2,000 pounds.	Bowman interlining with unnamed connecting carriers.	Prefers single-line service. Wants 3-day service. Presently allowing a week lead time	Bowman and Johnson
19. (647) Display Fixtures Co., Rack Stand Fixtures Co., Charlotte, N.C. Fixtures for display of merchandise	From Charlotte to points in Texas. Monthly shipments range between 10,000 and 12,000 pounds	Johnson, Thurston, East Texas, Bowman, Ryder, ETKWC, Akers, Red Ba..., Strickland, Southern, Roadway.	Prefers single-line service Wants between 2- and 3-day service	Bowman and Johnson Specific complaint made against Roadway
20. (660) North Carolina Display Fixtures, Cleveland, Ohio Fixtures for retail stores and greeting cards	From shipper's plant at Forest City, N.C., to points in Mississippi, Louisiana, and Texas. Shipments range between 5" and 3,750 pounds.	F & W, Consolidated, West, East Texas, Johnson, Thurston, Alamo, Central, McLean, Ryder, SWT, Deaton, MoPac, Red Ball, Strickland, Campbell, SAIA, Mercury, Lee Way.	Joint-line service inadequate Presently allowing 7 days lead time	Bowman and Johnson Shipper states that Roadway is authorized to serve the origin and destination point but will not accept LTL shipments. No other specific complaint
21. (*95) Rhyne Floral Supply Manufacturing Company, Gastonia, N. C. Straw wreath forms	From Gastonia to points in Mississippi, Texas, Arkansas, and Louisiana. Over a 6-month period it shipped about 50 LTL shipments to the above points. Average weight of each was 600 pounds.	Ryder, Bowman, Dixie, T.I.M.E.	Wants faster pick-up service and faster transit time	Bowman and Johnson No indication that existing service is inadequate
22. (655) Textiles, Inc., Threads, Inc., Gastonia, N.C. Thread and yarn.	From Gastonia to Dallas, Waco, El Paso, San Antonio, and Del Rio, Tex., Kansas City, Mo., and Meridian and Tupelo, Miss. Made in excess of 100 shipments to the above points during November 1964. Weight range from minimum to over 4,000 pounds. Average 1,000 pounds. This is only 50 percent of traffic moving to above areas.	Thurston, Bowman, Roadway, ETKWC, Carolina, ETWT, Strickland, Reese, T.I.M.E., Central, West, Campbell, Akers, Deaton.	Wants single-line service because it is more dependable. Allows lead time of 4 to 5 days to Mississippi and Louisiana points and 8 to 9 days to Texas points. Wants 3 to 4-day service to Texas points	Johnson and Bowman Akers offers joint-line service to many points in Louisiana and Texas
23. (863) Maple Products, Inc., Hanover, N. J. Ironing board pads	From shipper's Mastersville and Cornelius, N. C. plants to points in Texas. Made 84 shipments to various points in Texas during August 1964. Average weight was 250 pounds.	Johnson, Republic, Fredericksen, ETWT, Valley, Red Ball, Central, Strickland.	Pick-up transit time can be improved. Needs more equipment. Wants 2-day service to Dallas and Houston, Tex.	Bowman and Johnson Bowman and Johnson can presently serve shipper in joint-line service over the Memphis, Tenn., gateway. Shipper did not make any specific new complaints.
24. (928) P. Lorillard Co., Inc. New York, N. Y. Tobacco items	From shipper's Greensboro, N.C., and Louisville, Ky., plants to Shreveport and New Orleans, La., Little Rock, Ark., Kansas City, Mo., and Houston and Dallas, Tex. For a 6-month period in 1964 shipper moved in excess of 3 million pounds to the involved territory.	Mason & Dixon, ITOFCA, Bowman, Johnson, Roadway, Youngblood	Wants single-line service. Wants 2-day service to involved points. Needs to end pilferage problem	Bowman, Johnson and Roadway Shipper states that service at present is satisfactory but that it would prefer single-line service to avoid theft and pilferage
25. (929) Huntingdon Electric Corporation, Raleigh, N.C. Electric Motors	From Raleigh to points in Texas, Louisiana, and Mississippi. From 6/8/64 to 7/29/64 shipper had in excess of 125 shipments to points in the above territory. Average weight about 800 pounds.	Thurston, R.C. Motors, Dixie, G.F.A., Harris, ETWT, Couch, Strickland, McLean, SWT, T.I.M.E	Wants better transit time.	Johnson, Bowman
1. (317) Oklahoma City and Tulsa, Okla.	See shipper under Texas heading.	OKLAHOMA		
2. (652) Oklahoma City, Tulsa, and stores located in Oklahoma	See shipper under Texas heading.			
3. (961) Spiro, Stigler, and Wagoville, Oklahoma	See shipper under Arkansas heading.			
4. (*79) Jones, Inc., Oklahoma City, Oklahoma Automotive parts	From Oklahoma City to Atlanta, Ga., commercial zone (about twice a week, totaling 3,000 to 5,000 pounds). From Atlanta to Oklahoma City (250 to 300 pounds shipments about twice a month). From Oklahoma City to Texarkana (5 or 6 times a month each shipment weighs 75 to 300 pounds), El Dorado (same as Texarkana) and Magnolia, Ark. (ships once a month, each shipment weighing 100 to 300 pounds). Also, occasionally ships to Birmingham, Ala.	T.I.M.E., Transcon, REA.	Wants a faster single-line service. Average transit time 5 days including weekends. Wants second-day service to Atlanta and Birmingham	Jones, T.I.M.E. and Transcon offer single-line service to Atlanta but shipper states that their transit time is too slow.

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FINDINGS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applications supported and remarks
... (Tex.) ... Pipe ... Tulsa, Okla. ... rubber ... products	... to Jackson, Ala. Tulsa. Receives ... pounds a week from Gadsden, Ala., bound from Tulsa to L. Jarrah and Texarkana, Ark., shipper moves 100 t... 40 rounds about three times a month.	DC and JT are used inbound and ABF outbound.	Wants direct service from Gadsden; wants second morning service from Birmingham to Tulsa and second-morning service to L. Jarrah and Texarkana, Ark., from Tulsa. Wants faster service. Has ... ability in trading ship... ments on each ... one service.	Jones. Transcon can serve Tulsa directly from Birmingham
... (Va.) ... Southern Railway ... Tulsa, Okla. Receives ... and reclamation ... and equipment	... ...ts in Southeastern States to Tulsa ... at each weighing out t... ...ch flow ... two times a month.	T.I.M.E., ... Transcon, ... Bonded.	...	... ...
... Corp., Tulsa, Okla. Fiberglass pipe and fittings	From Tulsa to Barton, Ala., through Atlanta. Ships 24,000 pounds in LTL lots a month. Each shipment weighs 600 to 800 pounds.	Transcon, T.I.M.E. interlining with Central, Eastern, and Bonded. Also, Jones Roadway interlining with Ryder.	Shipments sometimes ... not arrive together. Currently has tracing problems because of interlining. Wants 2-day service from Tulsa to Atlanta. Presently allowing 10 days lead time from Tulsa to ... Five day service to Florida including interchange).	Jones. Roadway's and Ryder's service is satisfactory. Jones will still have to interline at Atlanta. Can presently use a two-line service by going through Birm. ghan. Can presently use Jones to Memphis and Ryder to Barton.
... (755) ... Metalcraft, Inc., Oklahoma City, Okla. Aluminum ... Tulsa, Okla. Farm ...	From Oklahoma City to points in Alabama and Georgia. Ships LTL lots in excess of 10,000 pounds a month. Expected to ship 15,000 to 20,000 pounds a month in 1967.	Transcon, T.I.M.E., Jones.	Needs fast delivery to construction ... sites. Even though T.I.M.E. has single-... authority, it still interlines. Wants 2-day service to Birmingham and ... ... Needs ... hour days ... time.	Jones. Transcon and T.I.M.E. offer single-line service to points in Alabama and Georgia.
... (755) ... Supply International, Tulsa, Okla. Pipeline equipment.	From Tulsa to the gateways of Atlanta, Ga., and Birmingham, Ala. Ships 1,000 pounds a month to Atlanta and Birmingham as gateways. Expected a ten percent increase in business in 196...	T.I.M.E., Transcon.	Wants faster transit time. Wants proposed 2-day service into Atlanta and 2-day service to Birmingham and to points on U. S. Highway 82, in Arkansas.	Jones. Shipper supports Jones on ... can have single line service to Atlanta and Birmingham but it already has such service available. Jones. Jones could not serve Dalton directly if authority was granted, it would interline at Atlanta.
(0. (758) Grigsby Carpet Co., Tulsa, Okla. Receives bales of carpets. ... (757) ... Lee Rubber & Tire Co., Inc., Tulsa, Okla. Building materials	From Dalton, Ga., to Tulsa. Receives 10,000 to 15,000 pounds a month.	Transcon, T.I.M.E., Roadway, Jones. Georgia Highway Express to Atlanta.	Wants faster service because of ... customer complaints and loss of sales due to slow delivery. Wants proposed 2-day service from Atlanta.	Jones. T.I.M.E. and Transcon offer single-line service from Atlanta to Tulsa (main receiving point). Several carriers have single-line service available. Jones. Proposed service is still joint-line. From some points Jones can offer a one-line service presently.
12. (761) Nelson Furniture Company, Muskogee, Okla. Carpets and furniture	From the area of Atlanta, Ga. and Birmingham, Ala. (as gateways) to Muskogee. Receiving about 120 shipments a year. No weight figures given.	RIA, Frisco, Santa Fe, Western Pacific, Jones, T.I.M.E., Cordons, Georgia Highway, Richway, B.I.F. Motor, Assor Trans., T. & P., Thornton, Mayr, Transcon, Mar... Mot., Dixie Ohio, Yellow Transit and E.T.&H.	Needs a carrier with single-line service to give faster deliveries. Average transit time five to seven days including weekends.	
13. (762) Hart's Window Screen Company, Muskogee, Okla. Receives aluminum products	From Birmingham, Ala., to Muskogee. Receives about two LTL shipments a month weighing about 800 pounds.	CTMC to Jones at Dallas, Tex. Gordons to Memphis, Tenn., to Jones.	Needs single-line service to better transit time and to lessen damage to product. Keeps a small inventory. Average transit time on three bills of lading was 5.3 days to Muskogee. Wants 2-day service to Muskogee.	Jones.
14. (763) Gibson Products Company, Oklahoma City, Okla. Receives clothing and shoes	From Georgia, Alabama and North Carolina to Oklahoma City. Receives over 300,000 pounds LTL and 175,000 pounds TL from the above States in a year.	Transcon, T.I.M.E., Jones interlining with CTMC.	Existing service too slow in transit. Needs rapid tracing. Has had some claim trouble with Ryder. Average transit time about 5 days, including weekends. Wants single-line service to cut 1 day off of transit time.	Jones. T.I.M.E. and Transcon offer single-line service to Atlanta.
15. (770) Universal Distributors, Tulsa, Okla. Receives carpet	From Calhoun, Ga. to Tulsa. Receives one shipment every 3 weeks weighing between 350 and 600 pounds.	T.I.M.E., Transcon, Jones, and Bonded.	Wants faster service out of Calhoun so as to compete with service from Dalton (Note: Jones' proposed shipper would get two to three day service. Currently receiving two to three day service. Also wants second morning service from Atlanta.	Jones. Jones and Bonded offer joint-line service out of Calhoun now.
16. (771) Fashion Carpets, Inc., Tulsa, Okla. Receives carpet rolls	From Dalton, Ga. to Tulsa. Receives eight to ten rolls a month from Georgia ... or ... ... and 600 pounds.	T.I.M.E., Transcon, RCA, Georgia Highway.	Shipper claims to have excessive delays with present ... Jones' proposed 1-day service from Atlanta.	Jones. T.I.M.E. and Transcon offer ... ... from Atlanta. Jones interlining with Bonded can offer a joint-line service from Atlanta.

Summary of evidence of supporting shippers—Continued

OKLAHOMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
17. (783) Tulsa Trim Supply, Tulsa, Okla. Carpets and plastic seat covers	From Dalton and Columbus, Ga. to Tulsa. Receives small LTL shipments once or twice a month.	T.I.M.E., Transcon, Jones.	Wants second-day delivery from Atlanta.	Jones. T.I.M.E. and Transcon offer single-line service from Atlanta. Shipper has found their services to be slow. Jones interlining with Bowman can perform the proposed service. Shipper has not made any complaints about existing service to Jones.
18. (785) Aluminum Window Products, Tulsa, Okla. Receives aluminum	From Birmingham, Ala., Newman and Moultrie, Ga. to Tulsa. Receives 15,000 to 20,000 pounds a month, mostly from Birmingham.	T.I.M.E., Transcon, Campbell, ETMF.	Wants second-morning service out of Atlanta and Birmingham	Jones. Transcon and Campbell offer single-line Birmingham. Two-line service is available from Moultrie.
19. (789) Robertson Factories SW, Inc., Oklahoma City, Okla. Outbound drapes. Inbound-piece goods.	From Oklahoma City to points in Alabama and Georgia and the Carolinas. From Atlanta, Ga., to Oklahoma City. Ships about 5,000 pounds a month to Atlanta and 100,000 pounds to the Carolinas.	T.I.M.E., Transcon, Jones, Thurston, Gillette, Helms, Dixie, ETMEC, Muchabee, S&W, Overnite, Nelson, Bowman, Nennie.	Present service is slow. Wants two-day service from Atlanta to Oklahoma. Shipper's transit time study shows that the averaged elapsed time in the listed shipments from Atlanta to Oklahoma City is 4.9 days and from the Carolinas it is 7.8 days.	Jones. T.I.M.E. and Transcon offer single-line service to Atlanta.
20. (790) Simco Awning Company, Muskogee, Okla. Receives screen, iron and ornamental components.	From Birmingham, Ala. to Muskogee. Receives one shipment a month weighing from 150 to 400 pounds.	Transcon, Cole, Jones.	Needs better service. Too much delay causes loss of customers. Present service takes one week to ten days, wants faster deliveries. Wants second-morning service from Birmingham and Atlanta.	Jones. Jones proposes second-morning delivery. No complaints regarding existing service.
21. (808) Burt Parkhurst and Company, Tulsa, Okla. Receives tubing, pipe and expanded metals.	From Birmingham, Ala. and Atlanta, Ga. to Tulsa. Receives 100 to 150 shipments a month from Atlanta. Average weight 150 pounds. Receives six shipments a month from Birmingham. Average weight 5,000 to 10,000 pounds.	Transcon, T.I.M.E., Gordons, Jones, Campbell.	Wants quicker deliveries. Wants second-morning delivery out of Atlanta and Birmingham to Tulsa.	Jones. Transcon and T.I.M.E. offer single-line service from Atlanta. Campbell offers single-line service out of Birmingham.
22. (815) Stilwell Canning Company, Stilwell, Okla. Canned and frozen foods	From shipper's facilities at Stilwell and Van Buren, Ark. to southern points through Atlanta, Ga. and Birmingham, Ala. gateways. Almost 350,000 pounds shipped in 1965 to Atlanta and Birmingham.	Uses own refrigerated equipment.	Wants single-line service for frozen foods. Wants 2-day service between Birmingham and Atlanta on the one hand, and Stilwell, Okla., Van Buren, Fort Smith, Ark., on the other.	Jones. Requires refrigerated equipment.
23. (834) Bagnong Furniture Company, Muskogee, Okla. Receives furniture	From Atlanta, Ga. and points in Virginia, North and South Carolina to Muskogee (using Atlanta and Birmingham as gateways). Receives about 25,000 pounds a year from Atlanta, Ga. Receives daily shipments of about 500 pounds from other points.	T.I.M.E., Transcon, Rocket, Yellow.	Wants single-line service to cut damages and speed up deliveries. Average transit time 6 days including weekends. Wants 2-day service from Atlanta and Birmingham which would enable it to have three or four day delivery from the Carolinas.	Jones. Jones is authorized to serve Muskogee directly from Memphis gateway.
24. (826) H & H Equipment Company, Tulsa, Okla. Outbound-power sewers and cows. Inbound-nylon wood and chains.	From Whitesburg, Ga. to Tulsa. (Atlanta gateway). Receives two shipments a year, each weighing about 800 pounds. From Atlanta, Ga. to Tulsa, one to four shipments a month each weighing about 40 pounds (only for 6 months a year). From Tulsa, Okla. to points in Arkansas. (No volume figures presented.)	T.I.M.E., Transcon, Jones.	Needs faster transit time because it cannot afford to inventory its parts. Wants second-morning service out of Atlanta and second-morning service from Tulsa to points in Ark.	Jones. Shipper has never used Jones with an interlining carrier to points in Arkansas. T.I.M.E. and Transcon offer single-line service from Atlanta.
25. (827) Harding Kindall Glass Company, Fayetteville, Ark. and Tulsa, Okla. Aluminum doors and tubing, and glass doors.	From Atlanta and Newman, Ga. (Atlanta gateway) to shipper's stores at Tulsa and Fayetteville. From Atlanta receives one shipment every two weeks at each destination. Average weight 300 to 400 pounds. From Newman receives one shipment every three weeks at each destination. Average weight is 700 to 800 pounds.	T.I.M.E., Jones.	Present service is slow. Wants second-morning service from Atlanta to Tulsa and Fayetteville.	Jones. T.I.M.E. offers single-line service from Atlanta.

Summary of evidence of supporting shippers—Continued

OKLAHOMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible] C. H. Anthony Company, Oklahoma City, Okla. Department store items	From points in Alabama, Georgia, North Carolina, and South Carolina, to points in Arkansas, Mississippi, New Mexico, Oklahoma, and Texas. Company receives at its warehouse in Oklahoma City between 500 and 1,500 pounds weekly from Atlanta, Ga., and about 50,000 pounds annually from other Georgia points. It receives between 4,000 and 5,000 pounds a year at its Oklahoma City warehouse from Birmingham, Ala. and about 27,000 pounds annually from other Alabama points. It receives about 100,000 pounds collectively from the Carolinas at its warehouse. Shipments over 100 pounds generally move directly to the stores located in Oklahoma and the stores in other destination States receives several shipments weekly from points in the origin States.	Ryder, Powell, Atlee, Alabama Central, T.I.M.E., Southwestern, Murdock, Gordons, Roadway, Sunset, Red Ball, Red Arrow, Overnite, Transcon, Riney, ETAMC, Brownell, East Texas, Tamiami, GAV, Georgia Highway Carriers, Mercury, Jones, Davis, Cherokee, Hall, Thurston, Western, Watson-Wilson, Yellow Transit.	Too many time delays and unpaid claims. Average transit time 7 days including weekends, except 2.8 days from Atlanta to Tulsa. Wants second-morning delivery from Atlanta to Oklahoma City, overnight service from Atlanta to points in Mississippi, and second-day service from Atlanta and Birmingham.	Strickland and Jones. It appears from the exhibits that present service is adequate. Proposed delivery time averages about 3.8 days.
[illegible] (831) Henderson Office Corporation, Muskogee, Okla. Foodstuffs	From Atlanta, Ga. to Muskogee. Receives about 200 to 3,000 pounds LTL monthly.	Gillette, Jones, Bowman.	Wants 2-day service from Atlanta. Average time from Atlanta to Memphis is 1.7 days. Average time to Muskogee was about 5 days, including weekends. Wants 2-day service from Atlanta to Muskogee.	Jones. Witness admitted present service is adequate.
[illegible] (845) Owen Nurseries Company, Tahlequah, Okla. Horticultural products	From Tahlequah to points in the southeast through gateways of Atlanta, Ga. and Birmingham, Ala. Tonnage of the traffic is TL with the remainder being LTL. From 1/1/66 to 6/15/66 shipper had 10 shipments to the southeast moving through Memphis. During 1965 shipper moved about 400,000 pounds to above destinations. Shipper also receives inbounds about 10,000 pounds LTL lots of certain nursery products from the Carolinas and Alabama.	Jones, Ryder, Overnite, Thurston, ETAMC, MBAA, Haines, Gordons, Bowman.	Too much damage to plants in joint-line service. Horticultural products need special handling. Wants 2-day service to Atlanta and Birmingham with traffic handled via Memphis gateway. Shipper receives 6.4-day service to the Carolinas, 6-day service (including weekends) to Florence, Ala., and 7-day service (including weekends) to Florida.	Jones
[illegible] (848) Rusk Swing Door Company, Oklahoma City, Okla. Aluminum doors and frames	From Oklahoma City, Okla. to Atlanta, Ga and Birmingham, Ala. Receives aluminum from Bowman, Ga. through Atlanta. Averaging about 1 shipment a week (600 to 700 pounds). About eight shipments a month moving to Atlanta. Each shipment weighing about 1,500 pounds.	Transcon, Jones, Pike, T.I.M.E., Frana.	Wants single-line service from Atlanta for speedier deliveries. Shipper has had difficulty in tracing shipments. Average transit time 5.5 days including weekends. Wants 2-day service from Atlanta.	Jones. Shipper can use Bowman and Jones interlining at Memphis, Tenn. Jones offers 2-day delivery from Memphis which is the same as its proposed service from Atlanta.
[illegible] (849) Rutch[illegible]'s, Inc., Oklahoma City, Okla. Receives clothing	From Atlanta, Ga. as a gateway to Oklahoma City. Receives in excess of 3,500 pounds a month, from Georgia and North and South Carolina.	Hidesouth, Gillette, Bowman, Transcon, Roadway, Pilot, Barnes, T.I.M.E., TCT, Overnite, Johnson.	Shipper wants quicker service. Wants 2-day service from Atlanta to Oklahoma City. Generally shipper receives 3.9 day service including weekends from Atlanta to Oklahoma City. Roadway has handled shipper's traffic from the Carolinas to Oklahoma City in 2.8 days (including weekends).	Jones. Jones offers 2-day service to Oklahoma City from Memphis.
[illegible] (852) Bryan Infants Wear, Inc., Tulsa, Okla. Receives piece goods	From Atlanta, Ga (gateway) to Tulsa. LTL shipments three to five a month weighing 200 to 500 pounds.	Roadway, Transcon, Strickland, Chief.	Wants more consistent service. Wants second-day service out of Birmingham and Atlanta.	Jones. Shipper states that existing service is occasionally poor. Shipper generally does not control routing. Shipper is unaware of several single-line carriers which offer service from the Carolinas.
[illegible] (854) Rusk Candy Company, Inc., Oklahoma City, Okla. Candy	From Oklahoma City to Birmingham, Ala., Atlanta, Ga., points on Arkansas Highway 82, and points in Texas. During a 1-year period it shipped $111,000 worth of candy to Georgia and $94,000 worth of candy to Alabama. Expects to ship 1,000 pounds a week to Texas.	Transcon, Jones.	Needs faster transit service. Wants second-day service from Oklahoma City to Sulphur Spring, Greenville, Paris, Texas and other points in Arkansas.	Jones. Transit time is important because candy is perishable. Only 35 percent of candies require refrigerated equipment, but each order will contain some of the items that do require refrigeration.

Survey of evidence of supporting shippers—Continued

PENNSYLVANIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (876) Phillips Van Heusen Corp., Pottsville, Pa. Clothing and toiletries	From shipper's distribution centers at Chattanooga, Tenn., and Pottsville, Pa., to points in Arkansas, Mississippi, Missouri, Kansas, Louisiana, Texas. About 22 million pounds move annually.	Merchants, Campbell, CTAHMC, Bowman, Gordons, Byars, Acme, T.I.M.E., Jones, Interstate, Lone Star, Red Ball, East Texas, West.	Joint-line service inadequate. Wants overnight service to Arkansas, and second-morning to other points. Presently allowing between 4 and 5 days lead time.	Bowman, Johnson.
2. (879) Pennsylvania Dutch Company, Mt. Holly Springs, Pa. Candy and food items.	Inbound, from Dallas (1,600 pounds a month) and Farmersville, Tex. (7,000 pounds a month) to Mt. Holly Springs. Outbound, from Mt. Holly Springs to Dallas and Houston, Tex., Baton Rouge and Shreveport, La., and Jackson, Miss. Ships about 5,000 pounds a month to above points. Each shipment ranges from 200 to 2,000 pounds.	Johnson, Roadway, Mason-Dixon.	Present service is too slow. Allows 7 days lead time to Dallas and Houston and 14 to 21 days to outlying Texas points.	Johnson. Johnson can interline at New Orleans with several carriers who can deliver to the involved points. Johnson's proposed inbound service would be a [illegible].
3. (878) McNeil Laboratories, Inc., Ft. Washington, Pa. Sugar, starch, plastic, and glass bottles	Outbound, it ships from Ft. Washington to points in Texas, Mississippi, and Louisiana. During November 1966, shipped about 17,000 pounds (LTL) to points in the above States.	Akers, Johnson, T.I.M.E., ETMF, Strickland, Transamerica, Consolidated, UPS.	Wants faster direct service. Eliminate tracing problems.	Bowman, Johnson. Shipper generally states that service is inconsistent. Ryder can serve some points in Louisiana, Mississippi, and Texas directly from Ft. Washington.
4. (877) Quaker Motor Freight Lines, Lewistown, Pa. Motor common carrier	Wants to interchange Texas, Louisiana, and Mississippi traffic with Johnson at Harrisburg, Pa.	Interchanges with Acme at Harrisburg and Philadelphia, also, with Roadway.	Wants to interchange on traffic moving to and from points south.	Johnson.
5. (884) Allis Chalmers Company, Pittsburgh, Pa. Electrical transformers	From Pittsburgh and Gadsden, Ala., to points in Arkansas, Louisiana, Mississippi, Missouri, Texas, and Kansas. During 1966, it shipped 276 shipments from Pittsburgh consisting of 11,065 units, and a total weight of almost 8 million pounds. Shipped 921 shipments from Gadsden consisting of 3,886 units, and a total weight of 1.7 million pounds.	B & O Express, McCombs, Bowman, Roadway, Superior, West, Campbell, Deaton, Gordons, Mercury, Western, ETMF.	Too much damage in transit. Wants faster transit time. Wants overnight service from Gadsden to Memphis gateway with next morning service to Mississippi, second-morning service to Louisiana and Arkansas, and second or third-day service to Texas, Kansas, and Missouri. (Average time in transit not given for specific points, and no transit figures are given for Pittsburgh.)	Bowman. Bowman only proposes to serve Gadsden. Superior can serve most of the points involved. There are a large number of irregular-route heavy haulers who can handle the involved commodities. Shipper also supported Roadway. Shipper has available to it the services of several regular route carriers. Shipper could not point out specific complaints. Open top equipment is required.
6. (881) Dennis Mitchell Industries, Inc., Philadelphia, Pa. Carts	From Philadelphia to points in Texas, Louisiana, Mississippi, and Arkansas. For a 3-month period in 1966 shipper transported 13 LTL shipments to Texas and 7 to Mississippi. Average weight 350 pounds.	Freight forwarders.	Shipper wants consistent pick-ups and faster deliveries than it is currently getting from freight forwarders. Wants 4-day service to Mississippi, Louisiana, and Arkansas.	Bowman, Johnson. Shipper has no specific complaints except excessive transit time and there is no evidence submitted to document poor transit time. Bowman and Johnson can serve shipper by interlining at Memphis and Mobile. Consolidated offers single-line service to Texas points.
7. (880) Congoleum Nairn, Inc., Kearney, N. J. Wall and floor coverings	From shipper's Marcus Hook, Pa., plant to points in Louisiana, Mississippi, and Texas. Shipper moves about 10,000 to 15,000 pounds a day to the destination territory. Weight range is from 200 to 9,800 pounds (LTL).	Sealand, Strickland, Roadway, Johnson, Harris, Transcon, Mason.	Wants faster transit time.	Johnson. Consolidated has single-line service to Houston and Dallas. Also Transcon, Mason and Dixon can serve many points involved, directly. It appears that many carriers including Johnson can serve the involved territory directly. Shipper set forth no examples of delayed shipments.
8. (913) Max Eckardt & Sons, Inc., Div. of Phillips Electronics, Inc., Saigerville (York), Pa. Christmas ornaments	From shipper's York, Pa., plant to points in Mississippi, Louisiana, and Texas. Ships about 75,000 pounds LTL to points in Mississippi 150,000 pounds a year to points in Louisiana, and ships 1.1 million pounds to points in Texas. Receives about 1.0 million pounds a year from the involved territory. Shipments range from 200 - 800 pounds LTL.	Time, Acme, Yellow, Ahern, Mercury, Interstate, Consolidated, Ryder, Harris.	Wants the services of a carrier who will leave trailers at its facilities and pick up the trailer when it is loaded. Wants single-line service. Shipper has had difficulty in obtaining pick-up service from Roadway.	
9. (917) McCrory Corporation, York, Pa. Department store goods	From York, Pa., to points in Mississippi, Louisiana, and Texas. Also from points in Massachusetts, Connecticut, New Jersey, New York, North Carolina, South Carolina, Pennsylvania, Rhode Island and Virginia to shipper's stores in the above-named destination States. From September 1966 through November 1966 shipper transported in excess of 250 shipments weighing from 100 to 7,000 pounds average. All LTL to points in the involved territory.	Bowman, Johnson, T.I.M.E., Leeway, Universal, Acme, ETMF, Alterman, Gordons, Transcon, Ryder, Strickland, Republic, Hemingway, Mason, Spector, PIE, West, Central, Ark. Best, National Wagon, etc.	Wants more consistent transit time. Shipper's transit time study indicates that on shipments to its store at Jackson, Mississippi, from Georgia, Massachusetts, New York, New Jersey, North Carolina, Pennsylvania, South Carolina it received generally 6-da, service. To its Texas stores from Georgia, North and South Carolina and the middle Atlantic States it received, on the average, between 7.9 and 12.2-day service. And, to its Louisiana stores it receives, on the average, between 9 and 10.5-day service.	Bowman, Johnson. Shipper has the services of a number of carriers available to it plus a large fleet of private equipment.

RHODE ISLAND

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (96): Tupperware Company, Woonsocket, R.I.: Plastic bowls and dishes.	From Woonsocket, R.I., to points in Texas in 1965 about 1 million pounds were shipped to Texas. Ships about once a week. 3,000 lbs - 40,000 pounds.	Acme, Universal, Johnson, East Texas, Lone Star, [illegible], Brink, and [illegible].	Shipper has been using a freight forwarder since it has no direct service to most points in Texas. Allows 7 to 8 days transit time.	Opposes Consolidated for single-line service to several points, also opposes interlining with East Texas of Atlanta offers single-line service.
2. (87): Lare, Wire & Cable Company, Pawtucket, R.I.: Wire and cable.	From Pawtucket, R.I., to points in Louisiana, Mississippi, and Texas. Ships between 61,000 and 70,000 pounds LTL a month to points in the destination States. Average weight of each shipment is 300 pounds.	Roadway, Johnson, Cunningham, Ryder, Transamerican, Lloyd, and Akers.	Wants single-line faster service	Shipper gives no specific complaints about existing service. It has not used Johnson to points where they have single-line service. Shipper has not used the services of a few carriers who can transport goods in a two-line [illegible].
(96): Collyer Insulated Wire Company, Lincoln, R.I.: Wire cable, copper, lead, and aluminum.	From Lincoln, R.I., to points in Texas, Louisiana, and Mississippi. During 1966 shipper transported about [illegible] pounds (LTL) to points in Louisiana. 600,000 pounds to points in Mississippi, and 600,000 pounds to points in Texas. See shipper under Massachusetts heading	Pumpkey, Johnson, Newpo, Yellow, Reimma., Universal, Spector, East Texas, and rail.	Wants single-line service. Roadway could not provide pickup service at times.	Roadway, Johnson: Shipper now has single-line service to all points to which it is supporting Johnson.
(92): Warren and Hanson, R.I.				

SOUTH CAROLINA

1. (13) Deering Milliken, Inc., Spartanburg, S.C. Outbound: textiles and textiles products. Inbound: raw materials.	Inbound mostly LTL shipments of raw materials move from points in Texas, Mississippi, and Louisiana to shipper's 29 plants located at numerous points in South Carolina. Approximately 75,000 pounds is shipped inbound each month with the average shipment weighing 1,900 pounds. Outbound shipments from the consolidating points via, Greenville or Spartanburg, S.C., to specified points in Texas and Louisiana collectively weigh 250,000 pounds a month. Of this amount approximately 100,000 pounds moves to Dallas, Tex., approximately 50,000 pounds moves to Houston, Tex., and approximately 30,000 pounds moves to Fort Worth, Tex. Shipper also has 119,000 pounds of outbound movements to specified points in Mississippi each month. Ninety percent of the movements are LTL. Between 90,000 and 100,000 pounds a month moves to points in Arkansas. Approximately 30,000 pounds moves each month to Kansas City. And, shipper has traffic moving to points to Oklahoma. Shipper routes between 75 and 80 percent of its outbound shipments.	Roadway is used to points in Texas. Ryder is used to points in Mississippi and Texas and Baton Rouge, La. Hamils handles shipments Kansas City traffic. Also, Watson - Wilson handles the Kansas City traffic in single-line service. Johnson is used to New Orleans.	Shipper's product is susceptible to considerable damage if handled excessively. It indicates that it must consolidate its freight from its various plants at warehouses in Greenville and Spartanburg and then deliver these shipments to the Roadway's dock. Limited shipper dock space also is a reason for consolidation. Shipper has experienced problems in receiving service to off-route points in Texas, particularly with Roadway. Shipper prefers single-line service from Greenville. It receives two or three complaints a month regarding Roadway's transit time to Dallas.	Floyd S Keeney, Johnson, Hanson, and Jones: Shipper moves its traffic from the South Carolina plants to the two consolidating points in the equipment of a carrier it owns. It is satisfied with Ryder's service to points in Texas and Mississippi. Shipper indicated that the service it receives to Kansas City and points in Arkansas is generally satisfactory. Roadway had a three-line haul restriction to points in Texas, and Ryder will not serve many of the points in Mississippi on a three-line haul. In this regard it is noted that sometimes the carrier shipper owns is a participating carrier. Even if the Jones application is granted, it would have to interline to serve points in Arkansas. Shipper indicated that it had no real complaint on Oklahoma traffic. Watson-Wilson's service to Kansas City is described as satisfactory. Shipper knows that there are several carriers operating from Greenville to Atlanta, and that a number of carriers operate from Atlanta to Dallas. Even if the applications are granted shipper will continue to use the carrier it owns to pick up shipments at its 29 plants and deliver them to carriers at Greenville.
2. (in) Genesco Mills Division of Bacon Manufacturing Company, Westminister, S.C. Blankets and [illegible].	From Westminister to points throughout the United States shipper has 10 million pounds of traffic a year. Almost all of this traffic is LTL. During 1965 shipper had about 59,600 shipments averaging about 168 pounds each, and about 600 shipments TL averaging about 19,000 pounds each. Shipper regularly has traffic to specified points in Arkansas, Mississippi, Florida, Kansas (Kansas City and Topeka), Missouri, Alabama, Louisiana, and Texas. During August 1965, it had 50 shipments weighing 8,290 pounds to eight specified points in Arkansas; collectively 23 shipments weighing 5,155 pounds to Kansas City and Topeka, Kans.; 17 shipments weighing 2,875 pounds to 8 points in Louisiana, including 4 to Baton Rouge; 32 shipments weighing 5,436 pounds to 9 points in Mississip i; 46 shipments weighing 9,455 to 14 tings, Kansas City and Springfield, Mo.; and 95 shipments weighing 20,180 pounds to 19 points in Texas.	Southeastern and Johnson originate traffic at shipper's plant and interline with other carriers at Atlanta.	Ryder will not pickup shipper's traffic at Westminister. Shipper wants single-line service from Westminister to the points to which it ships.	Floyd S Keeney, Johnson, Hanson, and Jones: Shipper states that it has no direct, single-line motor carrier service available from Westminster to Louisiana and Texas points that Floyd S Keeney proposes to serve. It indicates that about 12 carriers hold authority to originate traffic at its plant and transport it to Atlanta. Shipper believes that only two carriers, viz, Transcon and East Texas hold authority from Atlanta to Dallas. Shipper concedes that to the points to which it ships it has single-line service from Atlanta.

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
3. (37) Duncan Motor Lines	This general commodity motor common carrier interlines with other carriers at Greenville, S.C. Under its certificate of registration it serves approximately 100 South Carolina shippers which have traffic moving to specified points in Arkansas; to Kansas City and Topeka, Kans.; and to specified points in Louisiana, Mississippi, Missouri, and Texas. During 7/66 it interlined 8,730 pounds moving to points to Arkansas; 2,670 pounds moving to Kansas, 18,700 pounds to Louisiana; 38,340 pounds to Mississippi; 1,810 pounds to Missouri; and 31,015 pounds to Texas. Duncan routes approximately 50 percent of the freight it originates.	On shipments to the Southeast Duncan interlines with R.T.&W.N.C., Thurston, and Bowman. It has a concurrence with Roadway and also interlines with Johnson.	Duncan wants two-line service made available to its customers. Two-line service would also increase Duncan's revenue because it would not have to be divided among three carriers. Roadway does not accept certain types of freight from Duncan at Greenville	Bowman, Johnson, and Jones. Duncan was not able to establish a concurrence with Ryder However, Ryder, which has a terminal in Greenville, holds single-line authority between a number of points in South Carolina, Texas, Louisiana, and Mississippi. Bowman holds authority between Greenville and Atlanta, Ga. Johnson, which has a terminal in Greenville, can serve all of the points in South Carolina that Duncan serves. Bowman and Johnson by interlining with other carriers could render two-line serve to all the destination points Duncan named. If the Johnson and Bowman applications were granted they could offer South Carolina shippers single-line service to the destination territory. However, Duncan believes that its customers would still prefer that it originate their traffic and interline with their carriers. Roadway holds single-line service between Greenville, on the one hand, and, on the other, Kansas City and Topeka Service to Little Rock, Ark. was described as satisfactory.
4. (38) Chemstrand Division of Monsanto Company, New York, N.Y. Synthetic fiber, synthetic staple fiber, synthetic fiber yarn, plastic resins, chemicals, nylon intermediates, and finished and unfinished fabrics.	(1) From Blacksburg and East Greenwood, S.C. to Anadarko, Okla. 7.5 million pounds moves annually. (2) From Blacksburg and East Greenwood to Bonnerville, Tex. 100,000 pounds moves annually. (3) From Pensacola, Fla. to Greenville, Miss. 3.5 million pounds moves each year. (4) From Blacksburg, East Greenwood and Decatur, Ala. to Houston 75,000 pounds moves annually. (5) From Blacksburg, East Greenwood and Decatur to Laredo, Tex. 1 million pounds moves each year. (6) From Blacksburg, Greenwood, and Decatur to Terrell, Tex. 25,000 pounds moves annually. (A) From Pensacola, Fla. and Blacksburg and Greenwood to Bentonville and Rogers, Ark., 30,000 pounds moves annually. (B) From Pensacola, Blacksburg and Greenwood to Grenada, Miss., 50,000 pounds will move annually. (C) From Pensacola, Blacksburg, and Greenwood to McComb, Miss., 25,000 pounds moves each year. (D) From Pensacola, Blacksburg and Greenwood to Rolling Fork, Miss., 25,000 pounds moves annually.	(1) Raw Dixie to Atlanta, Ga., Transcom to Oklahoma City, Okla. and Lee Way to destination. (2) Bowman to Birmingham, Mercury to Houston, Tex. and Brown's to destination. (3) Mercury to Covington and Deaton to destination. (4) Bowman from the two South Carolina points to Birmingham and Mercury to destination. Baggett from Decatur to Birmingham, Mercury to destination. (5) Bowman from the two South Carolina points to Birmingham, Mercury to Houston and Brown's to destination. Baggett from Decatur to Birmingham, Mercury to Houston and Brown's to destination. (6) From the two South Carolina points Bowman to Birmingham, Mercury to Dallas and Southern Plaza, to destination. From Decatur Baggett to Birmingham, Mercury to Dallas, and Southern Plaza to destination. (A) Bowman from Pensacola to Memphis and Jones to destination Raw Dixie from two South Carolina points to Atlanta and Bowman T.I.M.E. to destination. (B) Bowman From Pensacola to Memphis and Rabel to Grenada, Raw Dixie from the two South Carolina points to Atlanta and Deaton to Grenada. (C) Mercury from Pensacola to Birmingham and Deaton to McComb. Raw Dixie or Overnight from two South Carolina points to Atlanta and Deaton to McComb. (D) Mercury	(1) Shipper wants 5-day two-line service, via, Johnson or Bowman to Dallas, Tex. and then Lee Way to destination. Although Roadway holds single-line authority from Blacksburg and East Greenwood and from Decatur, Ala. It indicated to shipper that it preferred not to handle shipper's outbound traffic. (2) Shipper wants three-line haul reduced to two-line; via, Johnson or Bowman to Houston and Brown's to destination and it wants 4-day service. (3) Shipper wants 1-day single-line service from Bowman. (4) Shipper wants 5-day direct single-line service of Bowman or Johnson from South Carolina points and Bowman from Decatur. (5) Shipper wants 4-day two-line service of Johnson or Bowman from South Carolina to Houston and Brown to destination. It wants Bowman from Decatur to Houston and Brown's to destination. (6) Shipper wants 4-day two-line haul of Bowman or Johnson to Dallas and Southern to destination. (A) Shipper wants Bowman to handle this traffic to Springfield, Mo. where a connecting carrier will interline. It feels that this way the originating carrier can control the traffic for all but 107 miles of the movement. (B) Shipper wants Bowman to originate this traffic and interline it at Winona, Miss. It believes that since Bowman would handle the traffic for all but 25 miles of the movement it would receive prompt delivery. (C) Shipper wants Johnson or Bowman to originate this traffic and interline at Jackson, Miss. with a connecting carrier. Originating carrier would handle traffic for all but 45 miles of the movement and influence the prompt delivery by the connecting carrier. (D) Shipper wants Bowman to transport the traffic to Greenville, Miss. for interline. Johnson would also originate the South Carolina traffic and interline at Jackson	Bowman, Johnson, and Jones Ryder has single-line service from pertinent origins to Houston but does not wish to handle shipper's traffic. Deaton has authority to serve shipper's Decatur plant on specified commodities to points in Louisiana and Mississippi Their service in minor movements is described as satisfactory. ETSWC provides single-line service between Blacksburg and East Greenwood, on the one hand, and, on the other, Greenville, Miss. Campbell requested that shipper not use it on interline at Birmingham and it has filed tariff exception. Bowman does not seek authority to serve Winona, Miss. with respect to part (B)

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting MJS service	Alternatives supported
(79) ——		from Pensacola to Jacksonville and Charleston. Rydar's record has been poor for overnight delivery to South Carolina points. Rydar has been unable to meet 24-hour delivery schedules.		
(80) Carter Southern Co., Seneca, S.C. ——	From Seneca shipper has 12 movements to Beaumont, Dallas, Fort Worth, Houston, Orange, and Texas City, Tex., and Baton Rouge, Lake Charles, Monroe, and Shreveport, La., monthly between 150,000 and 200,000 pounds collectively moved to the above described points. Shipper also has about 50,000 pounds moving annually to the Kansas points Bomtar seeks to serve about the same volume to Inland Missouri points, and about 40,000 pounds to Arkansas points annually. Additionally shipper has traffic moving to Inland Mississippi points.	Ryder and M.J.S. Ryder has been unable to meet 24 percent of this traffic. The remainder is originated by Rucker which interlines with East Texas at Atlanta. Shipper believes that Rucker or other carriers to points in Kansas and Missouri. Ryder is used to Arkansas and Mississippi. Shipper also uses parcel post	Shipper wants daily service to the Carolinas and next morning service to the Texas, Kansas, Missouri and Arkansas points. Consistency of service is important because shipper's customers rely on delivery within a certain time. Shipper at times has difficulty getting service from Ryder. Service problems have been in the Kansas and Texas areas. Ryder cannot provide service to Kansas and Missouri points. Shipper prefers to use a short line carrier, Salt Fork Service to Enid, Oklahoma, for interline with Kingfisher carriers to avoid congestion at its loading docks	Bomtar and Johnson. Shipper has used the services of Bomtar and Johnson and describes them as satisfactory. It indicates that the routing to Kansas City and Topeka is satisfactory and that Johnson's service to Louisiana is satisfactory
(81) Carpenter, S.C. —— (82) Jeffrey Manufacturing Co., Belle, S.C. Steel and conveyors	See shipper under Nassau-Cerro traffic			
——	Inbound shipper receives area, from Birmingham, Ala., Pittsburg, Pa., Sparrows Point, Md., Ohio, and Chicago, Ill. Outbound each month shipper has movements to El Dorado and Little Rock, Ark. Two or three shipments to Arkansas points weighing a total of between 2,000 and 3,000 pounds; Kansas City and Topeka, Kans. two or two shipments a month weighing a total of 1,000 pounds; Baton Rouge and Lake Charles, La. two or three shipments weighing a total of between 2,000 and 3,000 pounds; Columbus, Jackson, Meridian, Pascagoula, and Vicksburg, Miss. two or three shipments weighing between 2,000 and 3,000 pounds; Kansas City, Mo., Beaumont, Dallas, Fort Worth, and Port Arthur, Tex. (3) or (5) shipments weighing a total of between 35,000 and 45,000 pounds. The average shipment weighs approximately 12,000 pounds	Bomtar and Johnson are used for inbound and outbound shipments. ET&WNC is used on shipments to Arkansas and interlining with Watson-Wilson are used to Kansas and Missouri. Johnson or Ryder is used to Louisiana. Bomtar-MJS Ryder is used to Mississippi. Ryder is used in the handling of overnight interlining with Transfer is used to Beaumont. Roadway is used to Dallas. Overnight interlining with Transfer is used to Fort Worth. Roadway or Ryder is used to Houston and to Port Arthur.	Shipper wants 2-day service to Arkansas, Kansas, Missouri, and Texas. Two or 3-day service is requested to Louisiana and Mississippi. Roadway is not authorized to pick up or deliver a pallet. This carrier has a restriction on its line haul in the involved area. Ryder renders a daily pickup service to shipper but it was unable to load two shipments in two separate days and had to return the following day and make the pickup. Shipper prefers single line service	Bomtar and Johnson. Shipper has used the services of Bomtar and Johnson and describes them as satisfactory. It indicates that the routing to Kansas City and Topeka is satisfactory and that Johnson's service to Louisiana is satisfactory
4. (79) Sacro-Iowa, Shops Division of Hayward Corporation, Easley, S.C., Outbound-textile machinery. Inbound-rubber washers.	Outbound shipper has movements from Easley to such points as Brenham, West, Sherman, New Braunfels, Laredo and Brownsville, Tex. Inbound shipments move from Meridian, Miss. to Easley. About 75,000 pounds moves inbound annually in 5% service approximately once every 2 weeks. Approximately 150,000 pounds will move to the Texas points annually. The outbound movements are generally TL lots weighing between 45,000 and 85,000 pounds each. Some of shipper's traffic moves through Laredo to points in Mexico.	Outbound Thurston interlining with Missouri Pacific Truck Lines is used. Also, Ryder and ET&WNC have been used.	Shipper wants 3- or 4-day service to the Texas points	Bomtar and Johnson. Shipper has only had only one call with respect to the existing service, although Broadway solicited shipper's traffic it has never used this carrier's services
9. (85) M.C.&S. Lines, Inc., Hartsville, S.C. ——	MC&S holds authority to transport general commodities, with exceptions, (1) between points in Darlington County, S.C. and between points in this County and points in South Carolina, and (2) between points in Florence County, S.C. and between points in Florence County and points in South Carolina. As demonstrated by an exhibit, the traffic which MC&S originated for one of its shippers moved to specified points in Texas and Arkansas. It serves 23 mills located at 7 points in South Carolina. This traffic accounts for 75 percent of its business	To Lorraine with Bomtar and Lowe at Greenville, S.C.	To interline with Bomtar has been satisfactory. On the other hand its interline with ET&WNC has not been satisfactory. Ryder refuses to consider interline. Roadway canceled its interline concurrence. Floyd & Beasley has refused to consider interline. This carrier does not agree with the general opinion of shippers that single-line service is preferrable to joint-line service	Bomtar and Johnson. Bomtar can serve the points in South Carolina this carrier serves in slug-a-line service but it interlines with M.C.&S. Inasmuch as Floyd & Beasley competes with M.C.&S. at the South Carolina points it does not wish to interline with this carrier. Southern Road-way has acquired authority to serve the South Carolina points and no longer wished to interline. Johnson also holds authority to serve all of the involved South Carolina points direct in a single-line service

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
10. (88) Her Majesty Underwear Company, Rowlins, S.C. Girls underwear and sleepwear	From Rowlins to Dallas, Fort Worth and Houston, Tex. The shipments, which are LTL and weigh an average of 225 pounds, move about twice a week to each of these.	Thurston originates the traffic and interlines it at Memphis, Tenn.	Shipper wants 4-day service or better to these Texas points. The single-line services of Roadway and Ryder are not used to the named Texas points because shipper was not satisfied with the service rendered by these carriers. The interline service rendered by Thurston since the beginning of 1964 is described as unsatisfactory.	Bowman and Johnson. Shipper uses the services of Johnson and describes this carrier as reliable. It has not used Bowman's service. Shipper has not tried Johnson to New Orleans and interlining there with connecting carriers to Texas because it does "not feel that it was fair to [illegible] Thurston's service/[illegible] such a short period of time."
11. (179) Stanton Mills, Stanton, S.C. Towels, dish cloths, table covers, napkins, and wash cloths	From Stanton to Dallas, Houston, and Fort Worth, Tex. Shipments vary from LTL to TL. Between 20,000 and 30,000 pounds move each month to Houston, with the average shipments weighing between 5,000 and 6,000 pounds. About 9,000 pounds move monthly to Dallas.	Roadway in single-line service and Johnson in interline service.	Shipper has received complaints regarding the transit times of Roadway and Ryder. Transit time is important to shipper. It allows 7 days for delivery to Dallas and Houston. Second- or third delivery is preferred. Shipper wants single-line service because it wants to limit the amount of handling of the expensive and easily damaged cartons in which it ships its commodities.	Bowman and Johnson. Shipper has used Bowman's and Johnson's service and has found them to be satisfactory.
12. (207) International Paper Company, Mobile, Ala. Purchased - paper, paper articles, and wood pulp. Inbound - machinery, parts thereof, resins, sizings, and other materials and supplies.	From its Georgetown, S.C. plant shipper moved, in 1965, a total of 536,000 pounds to Jackson, Miss.; Shreveport, Bastrop and Springhill, La., and Dallas, Fort Worth, and Houston, Tex. (2) From its Mobile, Ala. plant in 1965 shipper moved 1.5 million pounds to points in Texas including Houston, (565,000 pounds) Fort Worth, (410,000 pounds), Beaumont (599,000 pounds), Dallas (570,000), and 69,000 pounds to Baton Rouge, La. (3) From its Pine Point, Miss. plant during this same period it shipped 625,000 pounds to Houston, 99,000 pounds to Dallas and 144,000 pounds to Fort Worth. (4) From its Bastrop plant it shipped a total of 9.7 million pounds to Atlanta, Ga.; Washington, D.C.; Baltimore, Md.; Philadelphia, Pa.; New York, N.Y.; Boston, Mass.; and unnamed California points. (5) In 1965 from its Springhill plant it shipped a total of 9.7 million pounds to Atlanta, Ga.; Washington, D.C.; Baltimore; Philadelphia; New York; Boston; and unnamed California points. (6) From its Camden, Ark. plant in 1965 it shipped 30,000 pounds to Gadsden, Ala., 90,000 pounds to East Pepperell, Mass.; 40,000 pounds to Burlington, N.J.; 100,000 pounds to Camden, N.J.; 84,000 pounds to Bessemer, Ala.; 100,000 pounds to Everett, Mass.; 170,000 pounds to Seymour, N.J.; 30,000 pounds to Ladd, N.J.; 80,000 pounds to Statesville, N.C.; 30,000 pounds to Marcus Hook, Pa.; and 33,000 pounds to Charleston, S.C. (7) Also, from Camden it shipped 70 tons to Statesville, N.C.; 60 tons to Winston-Salem, N.C.; 15 tons to Philadelphia, Pa.; and 16 tons to Prosper, Texas and (8) From its Pine Bluff plant in 1965 it shipped 17 tons to Augusta, Ga.; 45 tons to Wolmbi, N.J.; 20 tons to Libbystown, Pa.; 137 tons to Philadelphia; 400 tons to Atlanta, Ga.; 80 tons to Raleigh, N.C.; 12 tons to Covington, Ga.; 75 tons to Charleston, S.C.; and 30 tons to Cartersville, Ga. This traffic moved in TL and LTL shipments.	Johnson and Bowman have a trailer pool at Georgetown. Shipper used this also from Mobile. Above is used from Georgetown. From Mobile to Texas, Mercury, Red Ball and West to Houston and Beaumont are used. West has a trailer pool at Mobile. From Pine Point shipper uses Johnson, West, Red Ball, Wilkinson, and Mercury to Dallas, Fort Worth, Houston, and Beaumont in joint- and single-line service. From Bastrop Red Ball is used. Except for the Camden plants, Red Ball serves all shipper's plants in Arkansas, Mississippi, and Louisiana. From Camden ABF, Southeastern, Mercury and Atlas are used. From Pine Bluff ABF, Superior, Southeastern and Atlas are used. From Pine Bluff ABF, Superior, Southeastern and Red Ball are used from Pine Bluff, Ark.	From Mobile to Houston and Beaumont, Red Ball's route is circuitous. Mercury does not pickup its trailers after 4:00 p.m. From Pine Point shipper has experienced delays with traffic which is interlined and is getting equipment to Pine Point. At Bastrop shipper once could not obtain enough trailers from Red Ball. The transit times shipper is receiving on traffic from Springhill is not consistent. Shipper does not have single-line service from the Camden plant to the territory Bowman serves and to some of the territory Johnson serves. It is using TOFC from Springhill to New York because it cannot obtain the transit time it requires from motor carriers. No more than 3-day service is expected in traffic from Springhill to New York, N. Y. and Philadelphia, Pa. Two exhibits were introduced to show transit times. The first covered nine shipments to Bastrop between March 23 and May 20, 1966. Only the transit times to interline points with Red Ball are given. One shipment from South Carolina was in transit for 7 days to Shreveport, two from New Jersey involved 15 and 18 days to New Orleans and Baton Rouge, respectively, three from Massachusetts, two in 4 days and one in 9 days to Memphis, two from Pennsylvania in 5 and 11 days to Memphis and Jackson, respectively, and one from Georgia in 14 days to Baton Rouge. The second exhibit covers 18 shipments handled between March 21 and May 20, 1966. The shipments moved to Pine Bluff, Ark., from points in South and South Carolina, Georgia, Massachusetts, and Pennsylvania. Transit times sought between 4 and 13 days.	Bowman and Johnson. Bowman and Johnson will pickup shipments after 4:00 p.m. Bowman and Johnson proposes to establish terminals at Monroe, La. and shipper will have to have a connecting carrier (shipper named Red Ball) originate the shipment at Bastrop and interline it at Monroe. Similarly a connecting carrier again shipper named Red Ball will have to serve Springhill interlining with Bowman and Johnson at Shreveport. Red Ball serves all of shipper's involved plants direct except the one located at Camden. Shipper indicates that it receives reasonably satisfactory service from Red Ball. Shipper was aware that presently Bowman could interline with Red Ball at Memphis, Tenn. in traffic to and from Bastrop or Springhill.

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
13. (210) Texize Chemicals, Inc., Greenville, S.C. Cleaning and buffing compounds, waxes, detergents, and sizing compounds	From Greenville during the first 2 weeks in 7/66 shipper had LTL and TL movements to Dallas (68,946 pounds), Fort Worth (1,011 pounds), Houston (25,465 pounds), Beaumont (1,482 pounds), and San Antonio, Tex (38,192 pounds). It also ships to other points in Texas such as El Paso, Palestine, Garland, Irving, and Waco. Shipper anticipates a 30 percent annual increase in sales. Shipper's commodities must be kept from freezing. About 90 percent of the above-described tonnage to Dallas was handled in private carriage. Common carriers are used on LTL and overflow TL traffic.	TOFC, private carriage, Ryder, Thurston, and Johnson. Ryder renders single-line service from Greenville to Dallas, Houston, Fort Worth, and Beaumont. Johnson is used to originate Greenville traffic.	Shipper wants second or third morning service on both LTL and TL traffic from Greenville to Dallas, Fort Worth, Houston, and Beaumont. It indicates that Roadway will not accept its traffic after the first frost since it is marked "keep from freezing". Shipper has received complaints on the interline service of Johnson and Thurston to Texas.	Bowman and Johnson. Shipments to San Antonio, El Paso, Palestine, and Waco would be interlined by applicants. Akers' service has been reasonably satisfactory.
14. (290) M. Lowenstein and Sons, Inc., New York, N.Y.	Ships cotton from points throughout Southeast to Anderson, S.C. Ships greige cloth from Anderson, to Rockhill and Lyman, S.C. Ships finished cloth from Rockhill and Lyman to points in Louisiana, Mississippi, and Texas. Ships fiberglass from Anderson, to points in Louisiana, Mississippi, and Texas.	Shipper operates the Catawba Trucking Company, which is authorized to operate in S.C. Shipments outside S.C. are interlined with Ryder, Roadway, and Johnson.	Business expansion desires the 2-day service proposed by Johnson.	Johnson
15. (331) The Kendall Company, Bethune, S.C. Surgical dressings and related products, textiles	From Bethune shipments move to numerous specified points in Texas.	Shipper's primary origin carriers are Thurston Motor Lines, Overnight Transportation, and Standard. Connecting carriers are Transcon Central, Merchants, East Texas, Gardens, Herrin, T.I.M.E., Roadway, and Ryder. Private carriage. Shipments to some Texas points currently move in three- and four-line hauls.	Desires single-line service, particularly to Dallas, to order to avoid delays on shipments to department stores. Transit study shows one shipment to Dallas handled by Overnight-Transcon took 25 days most shipments take 3 to 6 days. Delivery to smaller Texas points takes 7 to 13 days.	Bowman and Johnson
16. (424) Campus Sweater and Sportswear Co., Cleveland, Ohio. Wearing apparel	From shipper's plant at Chester, S.C. to points in Texas. Monthly shipments range between 38 and 2,891 pounds.	Johnson, Roadway, Lone Star, Overnite, East Texas, REA, Southeastern, National, Standard, Ryder, Delta, Transcon, Deaton, and Viking.	Prefers single-line service. Delay in pickups.	Bowman, Johnson. Except for Roadway, no specific complaints.
17. (460) Yorke Shirt Corporation, Belton, S.C. Shirts	From Belton between January and June 1966 shipper has 96 shipments with 1 movement to Texarkana, Ark., 1 to Kansas City, Kans., 3 to Jackson, Miss., 17 collectively to Lake Charles, New Orleans, Rustow, Shreveport, and Baton Rouge, La., and 74 collectively to Beaumont, Port Arthur, Baytown, Fort Worth, Dallas, and Houston, Tex.	Bowman in conjunction with connecting lines is used primarily. Ryder, Johnson, and Roadway are also used.	Shipper asserts that it has been unable to develop its business in the Southwest because of the lack of single-line service to points in this area. Shipper allows between 7 and 10 days for delivery to the Southwest. It needs 3- or 4-day service. Ryder has refused to originate traffic at Belton unless the shipment weighs over 1,000 pounds. It refused to accept shippers traffic in the fall of 1965, and it has requested shipper to originate its traffic with another carrier, for interline with Ryder at Greenville, S.C.	Bowman and Johnson
18. (574) Hill Points	See shipper under Georgia heading			
19. (599) Orangeburg, S.C.	See shipper under Louisiana heading			
20. (629) Jantzen Southern, Inc., Seneca, S.C. Clothing	From Seneca to Jackson, Miss., Baton Rouge, La. and points in Texas, and Arkansas. About 5 million pounds moves annually.	Ryder, Huckabee, East Texas	Joint-line service inadequate. Wants 3-day service to points in Arkansas, Louisiana, Mississippi, and Texas.	Bowman, Johnson

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting applicant	Application supported and remarks
21. (883) Stepan Products, Inc., Easley, S.C. and Landis, N.C. Children's clothing.	From Easley and Landis to points in Texas, Louisiana, and Missouri. Recently shipments range between 1,000 and 5,000 pounds.	Roadway, MEA, Ryder.	Joint-line service inadequate.	Bowman, Johnson.
22. (767) Raybestos Manhattan, Inc., North Charleston, S.C., Asbestos cloth, yarn, tape, and rubber products.	From Charleston to Little Rock, Ark. (100 pounds a month); Baton Rouge (600 pounds a month) and Shreveport, La. (600 pounds a month); Columbus and Jackson, Miss. (40,000 pounds a month), Kansas City, Mo., Kansas City, Kans. (2,000 pounds a month) and Dallas, Fort Worth, and Houston, Tex. (8,000 pounds a month). All shipments are LTL.	Joint-line services of Roadway - ABF, Johnson - Lala, Johnson - T&Y, Roadway - Robinson, and Southern - Dixie. Single-line services of Roadway and Watson-Wilson.	Prefers single-line service. Too many tracing problems in joint-line service. Wants 2- or 3-day service to all destinations.	Bowman and Johnson.
23. (768) Blair Mills, Inc., Dalton, S.C. Tennis and sock cloths.	From Dalton to points in Mississippi, Louisiana, Missouri, Texas, and Arkansas. Shipped about 340,000 pounds to above States during a 2-month period in 1966 in TL and LTL lots.	Ryder, GAF, Vernon, MEA, Overnite, Roadway, CTNF, and PIE.	Too much lag time between shipment and delivery. Allows 7 and 14 days lead time into improved territory and need at least 5-day service.	Bowman, Johnson. Shipper has rail service. Receiving good service from Roman using Memphis as gateway. Has some single-line service presently available. Has numerous joint-line services available.
24. (882) The Pyle-National Company, Aiken, S.C. Lighting fixtures and equipment. 25. (890) The Pyle National Company.	From Aiken, S.C. to points in Mississippi Louisiana, Texas, Arkansas, and Missouri. Shipper transported in excess of 150 shipments to the destination points during the last quarter of 1966. Average weight was 500 pounds. Some as 900 above.	Southeastern, CTNF, Watson, Red Ball, Johnson, Bowman.	Wants direct single-line service for faster and more reliable delivery and to lessen damage. Allows 9 days for delivery.	Bowman. Shipper had no specific complaints with existing service.

TENNESSEE

1. (24) Eureka Foundry of Chattanooga, Chattanooga, Tenn. Cast iron forgings.	From Chattanooga to Houston and Orange, Tex. Approximately 60 percent of shipper's traffic moving to points in Texas will move in TL lots with the remainder moving in LTL lots. The TL shipments will weigh between 37,500 and 40,000 pounds. The LTL shipments will weight between 1,000 and 5,000 pounds with the average shipment weighing about 500 pounds. Between 40,000 and 45,000 pounds would move to points in Texas each month. Approximately 75 percent would move to Houston and the remainder would move to Orange, Tex.	Baggett and Bowman originate this traffic. Shipper also uses Southern Railway, Robinson Freight Line also originates shipper's traffic.	Shipper prefers single-line service because faster service is provided and there is less chance losing the loose castings which make up a shipment. Also, shipper indicates that claims on multiple-line shipments are handled rather slowly.	Baggett: Shipper did not know of any single-line service from Chattanooga to the Texas points Baggett seeks to serve. It was not aware that Roadway, which has a terminal in Chattanooga, has a single-line service between Chattanooga and Houston. Shipper did not know of any claims with respect to its traffic moving to Houston or Orange. It has not investigated whether Ryder offers single-line service from Chattanooga to Houston and Orange.
2. (136) Memphis, Tenn.	See shipper under Georgia heading.			
3. (138) Cumberland Cane Company, Chattanooga, Tenn. Hand and steel chairs and poultry equipment.	From Chattanooga to points in Louisiana, Texas, and Arkansas. Between 8/1/65 and 7/5/66 shipper had movements to New Orleans, Lake Charles, Shreveport, La.; Kansas City, Kans., Dallas, Houston, and Texarkana, Tex.; Kansas City, Mo.; and Little Rock, Ark. The shipments weighed a total of about 140,000 pounds. Shipper moves about 500,000 pounds annually to Mississippi points.	During the aforementioned period Ryder was used on shipments to New Orleans and Shreveport; Control was used to Lake Charles, New Orleans, Dallas, and Houston; T.I.M.E. to Kansas City; Roadway to Dallas and Houston, LTL&MC to Houston, Texarkana, and Little Rock; Bowman to Dallas, Texarkana, and Houston; Watson-Wilson to Kansas City, Mo., Baggett to Lake Charles; and Southern to New Orleans and Houston. Shipper also uses private carriage on this traffic but would like to discontinue its use to the involve destination territory.	Shipper expresses a need for consistent overnight service to points within 400 miles of Chattanooga, and second-day service to Dallas and Houston. It is not satisfied with Ryder's service to New Orleans on export shipments because on two such shipments in the year before the hearing, Ryder, although allowed 4 to 5 days, was unable to deliver the shipments before the boat sailed from New Orleans. Shipper indicates that the existing service is unsatisfactory. It has difficulty in obtaining pickup service from Roadway and Ryder. Also, shipper has experienced difficulty in tracing. Ryder has informed shipper that it does not want to handle shipper's TL traffic.	Bowman. Shipper has used Bowman and found its service satisfactory.

Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

Shipper (name of and commodities)	Origins, destinations, rate type (if applicable)	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible] Chattanooga, Tenn. (Hauling tools and parts thereof)	From Chattanooga during 1971 and the first 6 months of 1972 shipper had movements to Kansas City and Springfield, Mo., Houston, Marshall, Dallas, Fort Worth, Beaumont, Longview, Texarkana, and Tyler, Tex., Monroe, St. Louis, Baton Rouge, Monroe, Lake Charles, Shreveport, West Monroe, and Boston, La., Greenwood, Jackson, Columbus, Meridian, Hattiesburg, Greenville, [illegible], and Pascagoula, Miss., Pleasant, Pine Bluff, Little Rock, Texarkana, Camden, El Dorado, Jonesboro, Texarkana, West Memphis, Ark., and Mobile, Ala. It had 123 shipments in Texas during this period weighing a total of about 220,000 pounds, 107 shipments to Arkansas weighing a total of about 50,000 pounds, 148 shipments to Mississippi weighing a total of about 75,000 pounds, 2 shipments to Mobile, Ala., weighing a total of about 1,000 pounds, 1 to Kentucky weighing 470 pounds, 4 to Missouri weighing about 25,000 pounds, 225 to Louisiana weighing about 130,000 pounds, and 1 to Arkansas [illegible], one weighing about 400 pounds.	Service lines, Southern Pacific Railroad, Texas & Pacific Railroad, Missouri Pacific Railroad, Burlington Northern, Inc., Greyhound Corp., Roadway Express, CTAMC, REA, Norton, T.I.M.E., Watson-Wilson, Mason & Dixon, Contra.	Shipper's [illegible] are [illegible] the rates [illegible] the rates [illegible] that serve [illegible] has received [illegible] from customers in Miss. Georgia and Louisiana relating to slow delivery. It has not received complaints about Bowman but it has received complaints about the [illegible] carriers. Shipper wants second-morning service to points in Mississippi, Arkansas, Louisiana, and third-day service to points in Texas and Missouri.	Bowman, however presently handles shipper's traffic from Chattanooga to Memphis. It does not participate in the Kansas City traffic. Bowman chooses the connecting carrier.
[illegible] Cleveland, Tenn. (Hauling shipper's traffic; commodities not shown)	From Chattanooga to points in Mississippi, Louisiana, Texas, and Missouri. All of shipper's traffic moves in [illegible] ers weighing 14,000 pounds. Between January and June 1972, shipper had traffic moving by motor common carriers from Chattanooga to [illegible], Jackson, and Meridian, Miss.; Jonesboro, Ark., and Kansas City and Springfield, Mo. Between January and [illegible], 1972, shipper indicated to private carriage to Camden, El Dorado, Little Rock, and Jonesboro, Ark.; Topeka, Kans.; Baton Rouge, Lake Charles, Monroe, and New Orleans, La.; [illegible], Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, and Vicksburg, Miss.; and Beaumont and Houston, Tex.	Tri-State Motor Transit Co. of Delaware (TSMC, is used to Little Rock and Greenwood and originates the traffic to Springfield, interlining with [illegible] and [illegible]. West Memphis Lines interlining with Southeast handles the Kansas City traffic. CTAMC and Service Lines interlining with Jones and Frisco handle the Springfield traffic. A.&M. Tom Sawyer renders single-line service to this point. Roadway interlining with Central handles the Louisiana traffic. Private carriage is used to points where shipper has one-, also only two-line service. It is used to return pallets and broken glass [illegible] Chattanooga. Another is used on shipments to Texarkana, Houston, Dallas, Fort Worth, Baton Rouge, Lake Charles, Columbus, and Long View. Central is used to Dallas. Ryder handles traffic to Vicksburg, New Orleans, Laurel, Houston, Dallas, South Houston, Fort Worth, and Baton Rouge. Service Lines is used on shipments to Springfield. Greyhound is used to Shreveport and Monroe. Dixie is used to Jonesville. Is bound to Chattanooga Motor is used from Houston, East Texas interlining at Memphis with Robinson or CTAMC is used from Dallas and Houston, Viking interlining with TCU at Nashville is used from Meridian, SAT interlining with CTAMC is used from Pine Bluff, STCO interlining with CTAMC at Memphis is used from Houston, TC interlining with CTAMC at Memphis is also used from Houston, and Viking interlining with TCU at Nashville from Meridian	Shipper [illegible] requirement overnight service [illegible] indicates that it is not unusual for one of its customers to call at 3:00 and request delivery of as many as five TL of bottles the next morning. Although Ryder was used in the 7 months before the hearing, shipper indicated that this carrier wants only TL lots moving to the North. CTAMC renders good service but occasionally it does not have equipment available. [illegible] has not always been able to furnish equipment. Shipper's New Orleans customer informed it did not want Baggett to deliver and that if the traffic was not handled in private carriage, shipper would lose the business	Bowman, however presently handles shipper's traffic from Chattanooga to Memphis. It does not participate in the Kansas City traffic. Bowman chooses the connecting carrier.
[illegible] Pine Bluff, Ark. (Rubber Industrial Tires and Tubes)	Outbound from Chattanooga between [illegible] and 71,000 shipments moved to Texarkana, Houston, Dallas, Fort Worth, Port Houston and Longview, Tex.; Pine Bluff and Texarkana, Ark.; Vicksburg, Pascagoula, Meridian, Jackson, Columbus, and Greenwood, Miss.; Springfield, Mo.; and New Orleans, Shreveport, and Baton Rouge, La., and Indianapolis, Ind. Inbound to Chattanooga between 03/30/63 and - 21 40 nine shipments moved, collectively, from Dallas and Houston, Tex., Pine Bluff, Ark., and Meridian, Miss.	[illegible]	[illegible] important because shipper's dealers [illegible] because they do not have the special equipment to mount [illegible] when a customer requires a replacement, he must wait until shipper wants the tire and ships it. The replacement is then forwarded to Chattanooga for credit to the customer. Dealers located at [illegible] Springfield, or Baton Rouge have complained about time in transit. Said poor [illegible] stated it has had difficulty in obtaining pickups from Ryder, Pendley, and [illegible]. It calls to order on at 12 p.m. for [illegible] the following day to obtain a pickup. Shipper wants 3-day service to Mississippi, Arkansas, and Louisiana, and 4-day service to Missouri and Texas. Shipper introduced no exhibit showing transit times or slow inbound shipments from points in Texas, Mississippi, and Arkansas. Shipper was unsatisfied with the 4- to 5-day service on the shipments listed which represent from 10 to 15 percent of its inbound traffic during the study period.	Bowman. Shipper [illegible] that the inbound shipments are not as important as the outbound and the it does not route the inbound shipments

Summary of evidence of supporting shippers—Continued

CHATTANOOGA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
7. (198) The Chattanooga Medicine Company and its divisions, Chattanooga, Tenn. Pharmaceutical drugs, patent medicines, flue chemicals, soaps, bleaching and cleaning agents	From Chattanooga during the first 6 months of 1946 shipments moved to Baton Rouge (93 shipments), Lake Charles (17), West Monroe (2), Monroe (49), Shreveport (64), New Orleans (6+), and Ruston (3), La.; Pascagoula (7), Jackson (10), Laurel (22), Hattiesburg (13), Columbus (8), Vicksburg (1+), Greenville (11), Greenwood (11), and Meridian (25), Miss. Shipper's traffic is seasonal. It ships more in the fall and early winter months, than its annual volume moving to these points would be three times the number of shipments that [illegible] period. Shipper also has about one shipment a month moving to Kansas City and Topeka, Kans.; Carthage, Kansas City, and Springfield, Mo. Shipper has 700 customers in both of Louisiana and Mississippi.	Ryder and Jones are used to Baton Rouge, Lake Charles, New Orleans, and Houston. Robinson is used to Monroe and in a interline service to Shreveport. To Mississippi Bowman originates the traffic and interlines at Birmingham and Mobile, Ala., and Memphis, Tenn., with West, Campbell, and Red Ball.	Shipper indicates that approximately 3 months before the hearing a representative of Ryder submitted to shipper a list of points the carrier did not want to serve in Mississippi and North and South Carolina. Fifty-three Mississippi points were listed. Shipper allows 4 days for delivery to Mississippi and it wants 3-day service. To Louisiana Ryder's service is described as slow. Shipper allows 7 days for delivery to New Orleans and 7 to 9 days to other Louisiana points. It wants 3-day service to New Orleans and not over 4-day service to other Louisiana points. Transit time is important because shipper's customers usually order only when they need the commodity. Shipper lost a Kansas City account because of poor transportation service rendered by T.I.M.E. Watson-Wilson is not used to Kansas City because it assertedly does not move the freight from Chattanooga sometimes for 7 to 10 days after making the pickup.	Bowman. Even if this application is granted, shipper would have to interline shipments to a vast majority of Mississippi points. Other than Ryder, shipper indicates that it does not have single-line service to points in Mississippi.
8. (209) Brock Candy Company, Chattanooga, Tenn. Candy	From Chattanooga during April 1946 shipper had movements to El Dorado, Jonesboro, Little Rock, Pine Bluff, Texarkana, and North Little Rock, Ark.; Baton Rouge, Lake Charles, Lockport, Monroe, New Orleans, Shreveport, and Ruston, La.; Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, and Vicksburg, Miss.; Beaumont, Dallas, Fort Worth, Greenville, Houston, and Port Arthur, Tex. The shipments weighed between 72 pounds and 16,968 pounds. There were about 150 shipments during this period. If it received adequate single-line service under Bowman's proposal, shipper indicates that its traffic would increase by 15 percent.	Private carriage, Robinson, ET&WNC, Ryder, Central, Aitcheson, T.I.M.E., Bowman. Private carriage is used to Texas.	Shipper needs protective service in both the summer and winter. Since it is unable to obtain protective service, some products cannot be shipped during certain periods. It wants a single-line service. Transit time complaints have been received. Shipper does not have protective service to points in Mississippi, except that provided by Aitcheson once a week to Gulf Coast points. Ryder's service to Mississippi is not used because shipper believed that Ryder does not offer service to Mississippi. Rumbley returned two shipments to Mississippi points which it indicated it does not serve. Joint-line service inadequate. Wants overnight and not more than second-day service.	Bowman. Bowman has been requested to provide protective service equipment on shipments to Mississippi but it did not provide this type of service.
9. (671) Pillsbury Co., Chattanooga, Tenn. Food products	From Chattanooga, Tenn., to points in Mississippi and Louisiana. Approximately 225 million pounds annually.	Bowman, Campbell, Ryder, Red Ball.		Bowman. Shipper specifically complained about Ryder's service.
10. (675) Chattanooga, Tenn.	See shipper under Pennsylvania hauling.			
11. (689) Memphis Furniture Manufacturing Co., Memphis, Tenn. Furniture	From Memphis, Tenn., to Mobile, Ala., and points in Georgia. Monthly 75 cm. LCL shipments range between 100 and 10,000 pounds.	Ryder, Alabama-Highway, Cole, Bowman, Harvin	Unsatisfactory service from existing carriers. Wants 3-day service.	Harvin. Alabama-Highway presently serves shipper in single-line service from Memphis to Mobile. Drop-offs in transit are required. Harvin. Bowman serves shipper in single-line service to Columbus.
12. (690) Harris Herman Cosmetics, Memphis, Tenn. Toilet preparations	From Memphis, Tenn., to Montgomery, Ala., and Columbus, Ga. About 700 pounds a shipment on an order basis.	Ryder, Bowman, Gardner, Harvin, Jack Cole, West	Needs faster service. Shipper was promised between 2- and 3-day service. Gets 1-day service. Presently allowing 3 to 5 days lead time.	Harvin. No evidence that existing service is inadequate.
13. (718) Command Corporation, Memphis, Tenn. Sheriff, tobacco, and insecticides	From Memphis, Tenn., to Columbus, Ga. No figures cited as to frequency of traffic. Shipments weigh between 100 and 30,000 pounds. Rent are LTL.	T.I.M.E., East Texas	Receives single-line service because present service is too slow. Need overnight service to Columbus.	
14. (901) White Swan Manufacturing Company, Murfreesboro, Tenn. Sporting wear	From Dallas, Tex., and Muskogee, Okla., to Murfreesboro, Tenn. Receives from above points between 500 and 7,000 pounds each day. Ships Murfreesboro to points in Texas (600 pounds a day), Louisiana (400 to 600 pounds a day), Mississippi (600 pounds a day), Arkansas (300 pounds a day), Kansas [illegible] pounds, and Missouri (400 to 600 pounds a day).	Red Ball, T.I.M.E., Consolidated, Ryder, Southeastern, Pulaski	Some shipments have been refused because of late delivery. Wants faster single-line service. Average transit time of 7.6 days to Murfreesboro on eight shipments.	Bowman. Transit time ranged from 4 to 14 days with ENT and Pulaski. Shipper has some single-line service available from Murfreesboro to the United States. Lost a $7,000,000 order because of slow delivery time. Can presently use Bowman in a joint-line service.

Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (816) Cavalier Corporation, Chattanooga, Tenn. Soft-drink coolers	From Chattanooga, Tenn., to points in Texas. From 3/10/66 to 11/22/66 Cavalier shipped in excess of 75 shipments averaging about 2,000 pounds to points in Texas. During 1966 about 1 1 million pounds were shipped to points in Texas with about 500,000 pounds going to the East Texas area.	Bowman interlining with Red Ball, Central, Couch, ABF, ETMF. Also used Robinson as originating carrier.	Wants fast single-line service so as to keep up with a competitor which has such service available	Bowman. Shipper has no specific complaints with existing service. In many cases the shipper does not specify the carriers. Ryder offers single-line service to some points in Texas.
16. (846) Grader Products, Inc., Chattanooga, Tenn. Wooden paint paddles and yardsticks 17 (884) Memphis, Chattanooga, and Nashville, Tenn.	From Chattanooga, Tenn., to Houston and Dallas, Tex., New Orleans and Metairie, La., and Hattiesburg and Jackson, Miss. From 3/28/66 to 12/8/66 shipper transported 24 shipments to the above points. Average weight was about 100 pounds. Shipper states that the above figures represent about one third of the traffic moving to the above destinations. See shipper under Alabama heading.	Bowman, Robinson, REA Private Carriage.	Wants single-line service. Allows 3 days lead time and 4 days for manufacturing.	Bowman. Delivery time is only critical in some cases. Shipper did not complain about existing service. It prefers single-line service.
		TEXAS		
1. (7) Visador Company, Jasper, Tex. Glazed wood products	From Jasper to specified points in Alabama, Georgia, Florida, and South Carolina. During February, March, and April 1966, shipper had 65 shipments totaling 15,962 pounds, with the average shipments weighing 246 pounds, to points in the above-described territory. During July season these shipments will increase by 20 percent. Shipper has branches at Atlanta, Ga., Fayetteville, N.C., and Dallas, Tex., among others.	Red Ball originates the traffic and interlines with East Texas, Cole-Drake, Central, Bowman, [illegible], Overnight, Huber, and occasionally others.	Shipper wants single-line service because its commodities are easily damaged and interchange of the freight increases the risk of damage. Also, some of the present joint-line [illegible] are circuitous. Although, even if granted the authority it seeks Red Ball could still not render single-line service to points in Florida, shipper believes that it could eliminate 2 days in transit.	Red Ball. Shipper handles the bulk of its freight, which is truckload, in its own equipment. It would tender Red Ball its LTL shipments. Of the shipments made during the study period, Red Ball, if it received the authority it seeks, would be able to handle those to Atlanta, Ga., Birmingham, Ala., and Greenville, S.C., in single-line service.
2. (75) Gulf Oil Corporation, Atlanta, Ga. Packaged petroleum products, tires, and tubes, and allied items	(a) From Port Arthur, Tex., to all points in Alabama and Georgia presently served by Baggett. During March, April, and May of 1966, it shipped an average of 107,581 pounds a month of packaged petroleum products by motor common carrier to Alabama and Georgia. Of this volume, 91 percent moved in TL and the balance in LTL. About three TL and five LTL shipments moved each month. The TL shipments averaged 37,490 pounds and the LTL shipments ranged from 500 to 5,700 pounds with the average being 2,018 pounds. Approximately 80 percent of this volume moves directly to shipper's customers and the balance moves to its bulk plants. In addition to this volume, shipper handles about one TL a month to each of its bulk plants in Alabama in its own equipment. (b) From Atlanta it ships empty shipping containers and collapsible pillow tanks to Port Arthur. The pillow tanks move in TL and LTL lots. (c) From Tuscaloosa, Ala., to its distribution center at Dallas, Tex., it ships 200,000 pounds of tires and tubes a month. Motor carrier service would be used to handle rush orders.	(a) From Port Arthur: Herrin, Ryder, ETMF, Central, CFA Mercury, Red Ball, Strickland, and connecting carriers are used. (b) From points in Alabama to Port Arthur it uses Baggett, Georgia Highway, and Ryder in connection with several carriers. (c) Rail service is used from Tuscaloosa to Dallas.	Shipper wants second or third-morning delivery from Port Arthur to points in Alabama and Georgia. Shipper prefers single-line service. It indicates that it receives satisfactory service from some (unnamed) carriers it is using and unsatisfactory service from others (unnamed).	Baggett. Red Ball and Herrin offer single-line service from Port Arthur to Mobile, Ala., but will not handle shipper's traffic at the rate desired by it.
5. (76) Dallas, Tex. 4. (90) Dallas, Tex. 3. (109) Houston, Tex.	See shipper under Massachusetts heading. See shipper under Georgia heading. See shipper under Louisiana heading.			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (30) Simmons Company, Southern Division, Atlanta, Ga. Cotton piece goods	Inbound to its plant at Dallas, Tex., shipper has traffic moving from specified points in States located on the East Coast such as New Jersey, North and South Carolina, New Hampshire, New York, Pennsylvania, and Connecticut. Between 2/7/66 and 3/4/66 shipper received a total of 74,220 pounds of LTL shipments from points in these States. During the same period shipper received traffic from Passaic, South Bound Brook, Mt. Holly, and Elizabeth, N.J.; Winston-Salem, Elkin, High Point, Concord, Kings Mountain, Roanoke Rapids, Hickory, Burlington, Conover, Newton, and Buckingham, N.C.; Orangeburg, Piedmont, Batesburg, Newberry, Cordiale, Sumter, Walhalla, Stanton, Lyman, McCall, and Travelers Rear, S.C.; Manchester, N.H.; Brooklyn, and Farmingdale, N.Y.; Philadelphia, Pa.; New Preston, Conn.; and Emporia, Va.	During the study period Roadway's single-line service was used to Dallas from specified points in New Jersey, North Carolina, and South Carolina. It was also used as the delivering carrier on interlined shipments from New Hampshire, New York, South Carolina, and Virginia. Other delivering carriers on interlined shipments include Gardens, Central, Transcon, Strickland, East Texas, and Chief. During the study period Overnight, White, Hutchison, Denver, and Watkins originated shipments at points in South Carolina; Lee originated shipments at Manchester; Thurston originated North Carolina shipments; New Dixie originated South and North Carolina shipments; Ryder originated South Carolina shipments; Johnson originated shipments from South Carolina; Kalmala originated shipments from Connecticut; Interstate and Fillius originated shipments from New Jersey; Holms and Tennessee-Carolina originated shipments from North Carolina; Pinter originated a shipment at Farmingdale; and Old Dominion originated a shipment at Emporia. Single-line service was rendered by Strickland from Brooklyn and Philadelphia and by Consolidated from Philadelphia.	Shipper has experienced difficulties with time in transit and consistency. It introduced traffic studies of shipments delivered between February 7 and March 4, 1966. Transit times to Dallas are given on 64 shipments. Weekends are included in most of the computations. A total of 53 of the shipments originated in North and South Carolina. On a majority of those originating in North Carolina shipper received 8-day service or better and in a majority of those originating in South Carolina shipper received 7-day service or better. On shipments originating in New York it received 7- and 8-day service. On the one shipment from New Hampshire it received 8-day service; from Virginia it received 7-day service on one shipment; from Pennsylvania it received 6-, 7-, 10- and over 10-day service; and from New Jersey it received 6-, 10-, and over 10-day service.	Johnson and Bowman. Of the 64 shipments for which transit times were given in the study, Roadway handled slightly over 40 in single-line service from New Jersey, and North and South Carolina. It rendered between 4-(not including weekends) and 10-(including weekends) day service. Its average transit time including weekends was about 6 days.
7. (207) Houston, Tex.	See shipper under Georgia heading.			
8. (213) Garland, Tex.	See shipper under Georgia heading.			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
9. (215) Lorch-Westway Corporation, Dallas, Tex. Piece goods.	Inbound to Dallas, shipments are received from specified points on the eastern seaboard with the majority of the freight moving from North and South Carolina. Shipments weigh from 100 to 3,000 pounds, and shipper receives about 10,000 pounds a month on the average.	Roadway is the primary single-line service utilized. Origin or intermediate carriers used are Ryder, Cole, Floyd & Beasley, and Thurston. Delivering carriers used are Central, East Texas, Herrin, Red Ball, Strickland, and Transcon.	Transit time and consistency of service are important in order for shipper to maintain an even flow of production in a highly competitive industry. The inbound shipments are used within a week after delivery. Shipper wants 3-day service, including weekends, in the inbound traffic to Dallas. It is open to receive freight on Saturday. A transit time study of all the shipments received at Dallas between January and October 1965 was introduced. It demonstrates that, including weekends, the majority of shipments from North and South Carolina were delivered in 5 or less days with the remainder involving transit times of between 7 and 10 days. On the majority of the listed shipments from the Middle Atlantic States shipper receives deliveries in 7 or less days including weekends. The majority of the shipments from Atlanta, Ga., were delivered in 5 or less days including weekends. And the majority of shipments from New England were delivered in 7 or less days including weekends. Shipper also introduced a list of shipments delivered during June and July 1966. It shows transit times similar to those discussed above. Shipper is not satisfied with the transit times.	Bowman and Johnson.
10. (216) Fashions of Texas, Inc., Dallas, Tex. Piece goods.	Inbound to Taylor, Tex., shipments are primarily from points in North and South Carolina and from other specified points on the eastern seaboard. Shipper receives at Taylor about 10,000 pounds a month from points in this origin territory.	The single-line service of Roadway has been used from the Carolinas and Strickland from New Jersey origins. The interline services of these two carriers, in addition to Ryder have also been used.	Shipper wants 3-day service excluding Sundays. Transit time is important because it is a factor in the time it takes to market shipper's commodity. Shipper also wants a consistent service so that it can schedule its production. It is not satisfied with the transit time of the existing carriers. A transit time study of 50 shipments delivered to Taylor between January and July 1966 was introduced. Transit times were given for 20 shipments. The computations include weekends. Some of the shipments listed compute only the transit time from an interline point, which will be indicated below in parenthesis. Three shipments from Virginia were delivered in 10, 9 (from Baltimore, Md.), and 8 (from Baltimore) days, respectively. Ten shipments were delivered from North Carolina in 11, 8, 7, 7, 6, 6, 7 (from Memphis, Tenn.), 5 (from Charlotte, N.C.), 8 (from Memphis) and 4 (from Memphis) days, respectively. Thirteen shipments were delivered from South Carolina in 7, 7, 7, 8, 6, 7, 5, 6 (from Charlotte), 6 (from Greenville, S.C.), 10 (from Charlotte), 6 (from Memphis), and 4 (from Greenville) days, respectively.	Bowman and Johnson. If their applications are granted Bowman and Johnson would interline with Central at Dallas for delivery to Taylor.
11. (217) Bell Textile Company, Dallas, Tex. Textiles and fabric.	Inbound from specified points in North and South Carolina and from Griffin, Ga., shipments move to shipper's stores located at Dallas and Fort Worth, Tex., Fort Smith, Ark., and Oklahoma City and Tulsa, Okla. From Griffin shipper receives at its five stores collectively about 50,000 pounds a year. From the North and South Carolina points it receives collectively 50,000 pounds a year.	Ryder is used from Griffin to Houston where it interlines with Red Arrow for delivery to Dallas. Ryder, Dixie, and Red Arrow are used from Yorkshire, N.C., Overnight and Transcon from Cole, S.C. to Dallas; Transcon to Oklahoma City, Ryder interlining with Western Carolina and Red Arrow to Fort Worth from Griffin; T.I.N.E. from Jamestown and Kannapolis, N.C., to Tulsa and Oklahoma City.	Shipper indicates that time in transit is important because of the seasonal nature of its business. It expresses a need for the proposed 3-day service of Bowman and Johnson from the Carolinas to Dallas and Fort Worth.	Bowman, Johnson, and Jones.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
12. (221) Visser Company, Inc., Dallas, Tex. Household chemicals and detergents	From Dallas to specified points in Georgia and Alabama about 16 shipments move each month. The shipments weigh an average of 230 pounds. During July and August 1956 shipper had agreements to Savannah, Thomaston, Hapeville, and Atlanta, Ga., and Birmingham, Selma, and Eutaw, Ala. Shipper expects its volume to increase 25 percent annually.	Gordons and Jones originate shipments to Alabama and Georgia.	Shipper has experienced difficulty with the service of Gordons in that this carrier has been 2 or 3 days late in making pick ups	Bowman, Jones, and Johnson. Shipper has satisfactory inbound service of Jones
13. (222) Stockton Manufacturing Company, Dallas, Tex. Inbound—piece goods Outbound—clothing	Inbound shipper receives at Dallas shipments from Clearwater, S. C., Atlanta, Ga., and other points in the South. Shipments are received weekly and weigh between 100 and 35,000 pounds with the average shipment weighing about 825 pounds. Outbound shipments are made daily to points in the South such as Birmingham, Mobile, and Montgomery, Ala., Columbus, and Atlanta, Ga., and Jackson, Miss. The average outbound shipment weighs about 175 pounds.	Inbound, shipper uses Roadway, East Texas, and Gordons. Outbound—all uses Brazos, East Texas, and Red Ball.	Shipper is not satisfied with the outbound service. It has received complaints and has had orders canceled because of delays. Shipper complains that Red Ball has not made pickups until between the day following the request to the morning of the third day. Consistent transit time is important on inbound shipments because shipper has to be able to schedule its manufacturing process. It cannot maintain a large inventory. Outbound transit time is also important.	Harris.
14. (225) Dayco, Dallas, Tex. Industrial and automotive rubber goods	Outbound from Dallas shipments are made on a weekly basis to Atlanta and Columbus, Ga., Jackson, Miss., Birmingham, Mobile, and Montgomery, Ala., and other points in Mississippi, Alabama, and Georgia. The average shipment weighs 325 pounds. Inbound at Dallas shipments are received from Atlanta weekly.	On outbound shipments Mercury and Red Ball are used. On inbound shipments Transcon and Roadway are used.	Transit time is important because shipper's customers order parts when they are needed. They do not maintain large inventories. Shipper indicates that shipments are delayed when an interchange is involved.	Harris. Shipper has not had any complaints with respect to the service of Mercury and Red Ball
15. (226) The Candy House, Nacogdoches, Tex. Candy	During April, May, and June 1956, shipper served 101,487 pounds from Nacogdoches to Atlanta, Ga.; Birmingham, Ala.; Greenville, Miss.; and to other points in the territory involved which shipper expects to be interchanged at Atlanta, Ga. Shipper expects its volume of shipments to increase 30 percent annually. About 10 percent of the above-described tonnage was shipped to Atlanta, Birmingham, and Greenville. The remainder moved to points in Florida, and North and South Carolina through Atlanta.	Red Ball originates 99 percent of shipper's traffic and interlines with Roadway and East Texas Central delivers the Florida shipments.	Consistency of service is important because shipper wants to be able to tell a distributor when the shipment will be delivered so the latter can plan his orders. Shipper indicates that complaints have been received on shipments moving to Greenville, Birmingham, and Atlanta it could not cite any specifics.	Red Ball. The interline service of Red Ball and Roadway has been generally satisfactory but shipper prefers single-line service.
16. (227) Sheffield Press, Inc., Dallas, Tex. Printed matter	From Dallas shipper has weekly movements to Atlanta and Columbus, Ga., Montgomery, Mobile, and Birmingham, Ala. and Jackson, Miss. Shipments weigh between 100 and 20,000 pounds.	Transcon Lines and Brownell.	Transit time is important because shipper's customers place their orders when they need the material and some of the material, or advertising matter, is dated and its delivery is scheduled. Shipper wants one carrier to handle as much as possible of its traffic. It complains that with Brownell it has experienced poor pickup service, slow delivery, and tracing problems. This carrier informed shipper that it did not wish to handle shipper's traffic to the Southeast.	Harris. Shipper is satisfied with the existing service to Birmingham and Atlanta but it believes that it could use additional service to these points.
17. (228) Brownell Paper Company, Dallas, Tex. Adding machine and teletype paper	From Dallas shipper moves about 3,500 pounds a month collectively to Atlanta, Ga., Birmingham, Ala.; and Greenville, Miss. The average weight of each shipment is approximately 700 pounds. Shipper also moves about 3,000 pounds a month to Florida, Georgia, and North and South Carolina.	Jones to Greenville, Transcon and East Texas to Birmingham and Atlanta	Because of the size of its loading dock, shipper has a problem with congestion during peak shipping periods. Red Ball makes daily pickups and utilization of this carrier would offer some relief to shipper's congestion problem. Shipper wants consistent second-morning service to Atlanta and Birmingham, and overnight service to Greenville.	Red Ball, Strickland, Bowman, and Johnson.
18. (229) Dallas, Tex. 19. (230) Frierson Oil Company, Dallas, Tex. Petroleum products in drums and packages	See shipper under Mississippi heading. From Dallas to points in Mississippi, Alabama, and Georgia. Some of the points to which shipments move are: Jackson, Miss., Birmingham, Mobile and Montgomery, Ala., and Columbus and Atlanta, Ga. The shipments weigh between 300 and 1,000 pounds.	East Texas, Gordons, and Transcon	Transit time is important to shipper because it is soliciting new business in Alabama and Georgia and an important factor in sales is transit time. Gordons' service is not satisfactory because it has been slow in making pickups and deliveries and shipper has experienced tracing and claim problems with it. Specific examples of the poor service of Gordons were cited by shipper.	Harris.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
20. (231) Alexander Smith, Dallas, Tex. Carpet in full rolls	Inbound to Dallas from Greenville, Miss., shipper receives about 100,000 pounds a month. Each TL shipment weighs about [illegible] pounds. Shipper expects an annual increase in its volume of five percent	Jones' single-line service is used from Greenville to Dallas.	Shipper wants to have a choice of single-line carriers from Greenville to Dallas. It indicates that only Jones holds single-line authority from Greenville to Dallas. Jones' service is asserted to not satisfactory because it does not always provide overnight delivery. Shipper wants to have the services of an additional carrier.	Red Ball. Shipper indicates that although Gardens serves from Greenville to Dallas its route is circuitous.
21. (232) Temple Industries-Moulded Seat Division, Pineland, Tex. Water closet seat	From Pineland during the first 6 months of 1966 shipper moved 16,444 pounds by Red Ball and 78,942 pounds in private carriage to Alabama; 50,352 pounds by Red Ball and 4,092 pounds in private carriage to Georgia; and 3,048 pounds by Red Ball and 79,632 pounds in private carriage to Mississippi. In Alabama the majority of its shipments go to Birmingham. Other Alabama points shipped to are Decatur and Huntsville. In Georgia shipments move to Atlanta, East Point, Rome, Athens, Albany, and Valdosta. The majority of its Georgia shipments go to Atlanta and about 20 percent of its Mississippi shipments move to Greenville.	Red Ball and private carriage.	Shipper wants to discontinue its private carriage operation and rely solely on Red Ball on eastbound shipments. It indicates that Red Ball is the only motor carrier serving Pineland.	Red Ball.
22. (236) Southwest Spring Manufacturing Company, Dallas, Tex. Springs, precision wire forms, metal stampings, and electronic boxes	From Dallas shipper moves about eight LTL shipments weighing about 3,000 pounds to Huntsville, Ala., each month. Shipper also has movements to Mobile, Ala.	Gardens and Red Ball originate shipper's traffic.	Shipper wants direct, single-line service with consistent second-morning delivery. It has experienced delays with interchange.	Baggett.
23. (238) Frostamp-Artic Air, Division of Lone Star Manufacturing Company, Fort Worth, Tex. Automotive air conditioners.	From Fort Worth about 23,000 pounds a month moves to Birmingham and Florence, Ala., and Atlanta and Columbus, Ga. All are LTL shipments. Shipper has about 60 shipments a month with each shipment weighing an average of 300 pounds. Shipper also has movements to the stores of a specified customer which stores are located in Mississippi, Georgia, Alabama, Tennessee, Virginia, North and South Carolina, and Florida.	Roadway, Mercury and Merrin.	Shipper wants direct, single-line service. It is not satisfied with the existing service because of delays and damage. Shipper has complained to Mercury and it has received complaints with respect to the interline service of Merrin.	Baggett.
24. (239) Utley Carpets & Draperies, Fort Worth, Tex. Carpets in rolls.	Inbound to Fort Worth shipper receives about 77,000 pounds a year from Atlanta, Rome, Cartersville, Archer, Dalton, Calhoun, Rossville, and Hodges, Ga. Inbound to its affiliated store at Dallas, Tex., shipper receives annually within 10,000 pounds of the amount received at Fort Worth. The shipments to Dallas move from the above-described origin points.	Georgia Highway interlining with Mercury; RCA interlining with Gardens and Central; RCA interlining with ETSWC and Southwest; RCA interlining with T.I.H.E. and the Chief, Baggett interlining with Mercury; Georgia Highway interlining with Mercury; RCA interlining with East Texas; Roadway; Murdock interlining with Gardens and Central.	Shipper wants direct, single-line service from the named points in Georgia to Fort Worth. Transit time is important because shipper orders the carpet when a customer places an order with it. Shipper has lost sales because it could not deliver when promised. Shipper introduced a transit time study of 73 shipments delivered to Fort Worth from the aforementioned Georgia points between 2/9/65 and 6/22/66. The listed shipments make up about 95 percent of the shipments received at Fort Worth during this period. Including weekends about 40 of the 70 shipments for which transit times were given, were delivered in 6 or less days. The remainder were delivered in 7, 8 or 9 days (including weekends), except four shipments which were delivered in 11, 12, 13, and 14 days, respectively. Shipper is not satisfied with these transit times and it indicates that transit times to Dallas are similar.	Baggett.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
25. (240) Gibson Products Co., Seagoville, Tex. General merchandise	From specified points in the Southeast shipper has movements to its 11 discount centers in Arkansas; 23 discount centers in Louisiana; and 62 discount centers in Texas. The shipments weigh between 100 and 800 pounds each. Shipper has two stores in Little Rock, Ark., one in Texarkana, Ark., one in Greenville, Miss., one in Jackson, Miss., one in Shreveport, La. (it is expected to open a second store in Shreveport), one in Bossier City, La., and at those points in Texas which Strickland can serve it has two stores at San Antonio, one each at Temple, Paris, Wichita Falls, and seven in the Dallas area.	The interline services of the following carriers were used on the movements listed in shipper's transit time study: Ryder Red Ball, Georgia Highway, East Texas, Harper, Brown, Cole, T&P Railroad, Johnson, T.I.M.E., Merchants, Perkins, [illegible] Gordons, Acme, Floyd & Beasley, Dixie, Transcom, Central, Roadway and Duncan. The single-line services of Roadway were also utilized.	Shipper is not satisfied with the transit times of existing services. It introduced a study of 41 shipments delivered between 10/11/65 and 3/22/66 to its stores located at Palestine, San Antonio, Paris, Temple, Longview, Lubbock, Abilene, Tyler, Seagoville, Sherman and Big Springs, Tex.; Shreveport, La. (five shipments) and Hobbs, N.Mex. (three shipments). Plenty-two of the shipments originated at points in Georgia, 15 at points in North Carolina and 9 at points in South Carolina. Excluding weekends and holidays the average transit time from the three-State origin area to points in Texas is 6.8 days. The average transit time of the listed shipments to Shreveport is 5 days, and the average transit time to Hobbs is about 5 days.	Strickland and Red Ball. Shipments moving from Georgia points other than Atlanta and at points in North and South Carolina would have to be interlined to Strickland by the originating carrier at Atlanta, Ga.
26. (242) Dallas Chamber of Commerce, Dallas, Tex.			General increase in population and business of Dallas area. Slow transit times on shipments particularly those destined to Carolinas—times up to 29 days on one survey of 113 shipments made by Chamber of Commerce members.	Appears at request of Strickland Transportation Co., [illegible] Red Ball [illegible] freight. Witness specifically stated that witness appears simply to give data and is not supporting or opposing any carrier.
27. Julian Bear Co., Inc., Inc., Dallas, Tex. Inbound-Cotton piece goods	Inbound freight to Dallas 40,000 to 50,000 pounds a month primarily from points in Pennsylvania, South Carolina, and Massachusetts.	Roadway in single line. Freight forwarders are Acme Fast Freight and Republic Car Loading. Joint-line services are Wilson-Braswell and Texas-Arizona. Transamerican and G&P Transportation are also used.	Desires to reduce inventories. Existing service has been slow, once causing plant shut down. Difficulties occurred when scheduled deliveries were necessary to coordinate inbound movements to production. For example difficulties occurred on scheduled deliveries of fabric from South Carolina and trim from the New England area. Shipper experienced difficulties in tracing shipments. Shipper's transit time studies show that it is generally receiving between 5- and 7-day service from the Middle Atlantic and New England States, 5- and 6-day service from the Carolinas; 4- and 5-day service from Alabama and Georgia and between 3- and 7-day service from Atlanta.	Bowman, Johnson and Jones.
28. (244) Bowmet Corp., Building Products Division, Dallas, Tex. Galvanized metal forms, mostly rain pipes	From Dallas 150,000 pounds a month to Greenville, Gulfport, Hattiesburg, and Jackson, Miss. (LTL & TL), and to points in Alabama and Louisiana.	Ninety percent by private carriage Red Ball, Dixie and Gordons. Shipper receives good service using Strickland to Little Rock, Ark., and Memphis, Tenn.	Relies on private carriage because of poor service rendered by existing carriers, and damage to merchandise. Strickland provides overnight service to Greenville and Jackson.	Strickland.
29. (246) Goodier Co., Dallas, Tex. Perfumes, cosmetics, and household items	From Dallas LTL shipments to points in Florida, Alabama, North Carolina, Pennsylvania, Georgia, New Jersey, New York, Arkansas, Connecticut, and Tennessee. Receives several shipments a month.	Mercury, Transcom, Morris, Red Ball, Roadway, Consolidated, Lee Way Motor Freight, T&P Motor Transport, Gordons, Jones, Springmoir Shipping, Braswell, and Ryder. Strickland Transportation Co., is no longer utilized because of problems with damage claims. Mercury has rendered good service to northern Florida.	Traffic has increased by 50 percent in last year. Shipments are COD to individual customers and complaints of delays in delivery have been frequent. Shipper has interlining problems of damage and difficulties in tracing shipments. Prefers promised 2-3 day direct-line service of applicants to points in Florida, Georgia, and North Carolina.	Bowman, Johnson and Jones. Under cross examination it was indicated that shipper was using joint-line service to a few points where direct service was available, i.e., to Columbus, Ga., where Roadway can serve directly. Evidence of complaints was general.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shippers, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
... (Tex) Textile Products Co., Inc. of Texas, Dallas, Tex. (Inbound—yarn, jacket materials and cloth; and outbound—knitted and cut trimmings of ... cotton and synthetic piece goods	Inbound traffic to Dallas originates at Bethune and Gainesville, Ga., and averages 21,000 pounds a month. Inbound traffic also originates at Winston-Salem, N.C. and averages ...000 pounds a month. Most traffic is LTL	Southern and Overnite joint-line service from Georgia points, interchange at Atlanta. Roadway direct from South Carolina, and Winston-Salem Thurston and East Texas joint-line service. Piedmont Motor Lines-Roadway joint-line from Blacksburg, S. C.	Two to three days transit time proposed would enable shipper to reduce its inventory. Considers presently used two- and three-line service to be inadequate. Inconsistencies in transit times interfere with or orderly inventory plan.	Jackson and Bowman. Transit time study shows merit. 7-day service ranges from 3 to 11 days. Many of the South Carolina ... own their own truck line and transportation of their supplies will continue to be interlined. For example, Piedmont Motor Lines is owned by Dearing-Milliken Mills of Blacksburg, S. C.
... (7th) Charles Bruning Co., Grand Prairie, Tex. Reproduction machine parts and paper and art supplies	From Grand Prairie 90 to 110 shipments a month LTL. Shipments move to Jackson and Greenville, Miss., branch offices of shipper, and to customers in southern Mississippi.	Rac Ball and Brosswell.	Service of Strickland to Louisiana points has been very good. Air transportation is used two to three times a week for emergency shipments to branch offices because existing service is poor on emergency shipments.	Strickland. Witnesses from shipper's branch offices at Atlanta, Ga and Jackson, Miss., also appeared.
... (2d9) Murray Co. of Texas, Inc., Dallas, Tex. Cotton gin machinery and parts thereof	Origins of inbound traffic to Dallas include points in Alabama, North Carolina, and Georgia. Outbound shipments move to points in North Carolina, South Carolina, Alabama, Georgia, Mississippi, Tennessee, Arkansas, and Louisiana. LTL shipments of repair parts, move inbound and outbound. Shipments of cotton gin machinery are usually made in several truckloads.	Private carriage is used. Mercury, Transcon, Red Ball, and United. Mercury is terminating with United is used to Atlanta.	Company has grown 15 to 20 percent a year for the past several years. Shipments of repair parts must be expedited and existing service has been slow. Shipments of cotton gin machinery are made in several parts and must be timed to meet installation procedures. Shipper complains of uncollected damage claims with Transcon. Shipper is not satisfied with transit time to the Carolinas and on inbound traffic. Its transit study shows that generally it receives 4-day service from Birmingham, Ala., and points in North Carolina, and 3- and 4-day service from points in Georgia.	Bowman, Johnson, Jones and Strickland. Use of flat-bed equipment required.
... (250) Brass Craft Eastern Co., Inc., Dallas, Tex. Inbound pipe connections, pipe joints, brass, bronze, and copper. Outbound-pipe fittings and valves	Shipments originate at Thomasville, N.C. Shipments are usually LTL. Shipper has a plant at Thomasville and the ultimate products (pipe fittings, valves, etc.) are usually manufactured, in part, at Thomasville and completed at Dallas. Some rubber goods are shipped from Charlotte, N.C. Other items are partially manufactured in Dallas and then shipped to Charlotte for completion.	Roadway.	Shipper expects traffic from Thomasville to increase 10 percent. Delays in transit have occurred on shipments to ultimate customers and on interplant shipments. On occasion, this has resulted in cancellation of orders. However, shipper was unable to give specific. Most shipments take 7 days (range of transit time has been 3 to 8 days)	Bowman and Johnson. While Roadway provides direct service between Thomasville and Dallas, shipper believes that use of applicants will reduce transit times.
... (251) Top Value Enterprises, Inc., Dayton, Ohio. Outbound general merchandise for use as premiums to redeem trading stamps. Inbound ... general merchandise at Dallas, Tex.	LTL shipments move from points in Georgia, North Carolina, South Carolina, Tennessee, Alabama, Virginia, and Mississippi, to the distribution center location at Dallas. Between 375,000 and 525,000 pounds are shipped during an average 1-month period. Over 1 million pounds are shipped during Christmas and Spring periods.	Joint-line services of Ryder-Red Arrow, Ry9-Ryder-Red Arrow, Georgia Highway Express-Roadway, Georgia Express, T.I.M.E.-Red Ball, Bow Bixie-Roadway, T.I.M.E.-Texas, Dale Express, Ward Jones, Youngblood-Eastern-Transcon, Akers-United-Mercury (TYMAC-Red Ball, T.I.M.E.-Red Ball, and private carriage is utilized.	Existing transit times generally range from 4 to 7 days. Shipper believes that Strickland's proposed 3 and 3-day service from Atlanta to Dallas would reduce the total transit time and allow shipper to reduce its inventory at Dallas. Shipper uses the services of ... areas and ... describes such service as being satisfactory.	Strickland. Deliveries of less than 100 cartons are accepted immediately but carrier must often wait a day after making an appointment with shipper to deliver large loads. Since cost ... consolidated an extra day is usually tacked on. Accordingly, the transit time study is most instances indicates a transit time somewhat longer than the time it takes to transport the shipment from origin to Dallas.
... (353) King Candy Co., Fort Worth, Tex. Candy	Ships 5,000 pounds a week from Fort Worth to Atlanta, Ga., 2,000 pounds a week to Birmingham, Ala., and 5,000 pounds a week to points in Georgia other than Atlanta.	Mercury-United in joint-line service and Transcon.	Shipper has a need for additional service particularly on shipments that are timed (i.e. Christmas and Valentine candies. Shipper complained of a lost shipment with Transcon.	Jones, Bowman, and Johnson. Shipper alleges that East Texas refused to handle any shipments to points not on its line. Shipper used Roadway in the past but alleges that Roadway does not desire to handle perishable freight.

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
36. (T35) Artone Basics and Artemesia, Inc.) Dallas, Tex. Imported furniture and household accessories	Ships nationwide and also has LTL shipments to points in Florida, Georgia, Alabama, North Carolina and South Carolina. These LTL shipments are made approximately once a week.	To Florida: Harris, Roadway, Mercury, and Howard Hall (interline). To Georgia: Harris, Roadway (direct). To Carolinas: Roadway.	Shorter transit time desired particularly on items made to order and sent to contractors, viz., restaurant furniture. Single-line service desired to alleviate damage and tracing problems.	Brennan, Johnson, and Jones.
37. (T36) Consolidated Handbags, Inc., Dallas, Tex. Handbags and accessories.	LTL shipments move to points in Alabama, Florida, North Carolina, Georgia, Tennessee, and South Carolina. Handbags are shipped to retail stores on consignment so that there are returned shipments of unsold handbags. Volume of traffic is small.	ETMF, Mercury, Roadway, Red Ball, Gardner.	Growth is about 10 percent a year--especially in the Southeast. Retail consignees usually maintain small inventories and require expedited service.	Brennan, Johnson, and Jones. Most difficulties seem to be in securing service on returned shipments moving to Dallas.
38. (T38) Coats and Clarks Sales Corporation, Dallas, Tex. Threads, yarns, tapes, zippers and needles.	Receives from 30,000 to 60,000 a week from Atlanta (7% shipments). Several shipments a week move outbound to Texarkana, Ark. Some shipments are received from Greenville, Miss.	Joint line: Beaton-Jones. Direct line: Southeastern Transportation to Texarkana.	Joint-line service causes inconsistencies in transit times interfering with maintenance of planned inventories. Shipper's transit time study shows that on the majority of its truckload shipments from Atlanta it is receiving 3-day service or better.	Jones and Red Ball. Shipper is satisfied with existing service to Texarkana.
39. (T39) Dallas Bias Fabrics, Inc., Dallas, Tex. Textile products.	Shipments are received from North Carolina, South Carolina, Georgia, and Alabama.	The joint-line services of ETAMC, Thurston, CAF, Piedmont, Packet, Overnite, Northern, Brewer, and Jones have been used. Mercury and Brownell are no longer used. Witness termed their service to be poor.	Shipper expects a 30 percent increase in inbound shipments during the year. Transit time is important on productions made to order. Shipper desires single-line service. Shipper's transit time study shows that it generally receives 5-day service from North and South Carolina and 4-day service from Georgia.	[illegible]
40. (T40) Cutter Laboratories, Inc., Dallas, Tex. Intravenous solutions and hospital supplies	Receives 150,000 pounds a month, mostly LTL, from shipper's facility at Chattanooga, Tenn.	Joint-line service of ETAMC, Brennan, Roberston are used to Memphis, Tenn. East Texas, Montgomery-Gillette, Strickland, and Red Ball are used from Memphis to Dallas.	Desires single-line service because of damage problems and inconsistencies of joint-line service.	Brennan.
41. (T41) Textile, Inc., Dallas, Tex. Outdoor signs and displays	Ships LTL and TL lots to points in Georgia, Alabama, Tennessee, Florida, South Carolina, North Carolina, Pennsylvania, New Jersey, and New York. Shipments average one a week to North and South Carolina, two a week to Georgia and Alabama, and two or three a week to Florida.	Private carriage is used. Joint-line originating carriers are Tennessee, Red Ball, Strickland, Mercury, Roadway, Harris, and Arkansas-Best.	Growth of traffic volume. Time in transit is important on shipments to service construction sites. Red Ball has difficulty [illegible] at Mobile on a shipment to Florida because Central Truck Lines refused to accept the shipment unless solidly crated. Products are fragile so single-line service is preferred. Desires better pickup service to avoid having to warehouse the signs.	Brennan, Johnson, Jones, and Strickland. Shipper considers 5-day service to Southern Florida, 4-day service to Alabama, Northern Florida, and the Carolinas, and 7-day service to New York to be satisfactory.
42. (T42) City Products Corporation, Dallas, Tex. Outbound-general variety store merchandise, inbound-textiles and white goods	Receives LTL inbound shipments from points in South Carolina, Georgia, Florida, Tennessee, Texas, Maryland, Virginia, Pennsylvania, New Jersey, New York. Receives 75,000 to 80,000 pounds of textiles a week from points in the Southeast. Shipments are made to Ben Franklin stores located throughout Texas and Louisiana, but majority of shipments to Dallas warehouse. The traffic from various origins is seasonal in nature, i.e. Halloween candy.	Freight Forwarders: Gardner, Transcon, Pendrey, Strickland, East Texas, Brown, Valley Motor Lines, ETMF, and Viking Freight.	Growth of business requires quicker service. Transit time study shows a shipment from Troy, Pa., being in transit 31 days. Service averages 6 to 8 days from points in the Southeast. Shipper considers 10-day service from points in the Southeast to be reasonable.	[illegible]
43. (T43) Duncan Foods Company, Houston, Tex. Coffee and tea	Distributorships located in 36 States. Shipper is primarily concerned with its roasting plant at Hinesiapolis. Mostly LTL shipments are involved. Ships about once a week from Houston to Jackson.	Red Ball and Ryder in single-line service.	Coffee is sold to institutional buyers packed in paper bags because it is more economical, however, this renders the coffee susceptible to contamination from other lading and increases the need for speedy service. Coffee in bags is good for only one week. Complains of contamination on shipments by Red Ball. Used Ryder for a short time after dissatisfaction with Red Ball, but Ryder's service was poor.	Harris. Proposes first-morning delivery to Jackson.

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
46. (264) Sur... [illegible] ...ers, Houston, Tex. ... [illegible] ...ances, insurance, general ... [illegible] ...ufacturers, and ...	Shipments average 100 pounds each and range from 25 to 500 pounds. Shipments move to ... outlet stores in Mississippi, Alabama, and Louisiana. Receives shipments from Atlanta, Ga.	Harris, ETAV, Mercury Consolidated Copperstore and Red Ball. ETAV is the only single line carrier from Atlanta to Houston.	Shipper plans to expand into Georgia and Alabama. Scheduled deliveries are important to most advertisements of sales.	Harris. Harris, Red Ba... and several others provide single-line service to some points. Red Harris serves more than others. Shipper desires as few carriers as possible because of congested loading docks and thus desires Harris's single-line service to be expanded Red Ball.
47. (266) Sun... [illegible] ...ickerth, Jr., Inc., Greenville, Tex. [illegible] ...ystems, [illegible] ...ufacturer	75% shipments to Birmingham, Ala., and Atlanta, Ga., as well as other points in Alabama, Georgia, North Carolina, South Carolina, and Florida. 25% to 5 shipments a month to Atlanta and 5 shipments a ... Birmingham.	Joint-line service of Red Ball - Dixie, Red Ball - Transcon, Red Ball - Rowley, Red Ball - Gardner, Central ... same as with Red Ball - Jack Cole.	Needs consistent single-line service to meet competition. Anticipates an increase in business. Most shipments are by Red Ball on joint-line service with interchange at Memphis or Atlanta. Delays have occurred at point of interchange. Since Red Ball serves shipper in single-line service to various other points, not involved herein, and that service is good, shipper concludes that the delays result from the joint-line character of the operation.	Harris. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Expects still interchange at Jackson to reach other Mississippi points and at Mobile to reach other Alabama points.
48. (269) ... Glass Corporation, district warehouse at Dallas, Tex. Plastic ... [illegible]	Shipper is interested about shipments from Dallas to Mississippi and points in the Mobile, Ala., vicinity. Three to four shipments a week move to Mississippi. Shipments range from 500 to 3,000 pounds, most are LTL.	Red Ball, TAP, Transcon, not used or provided poor service because of delays and lost shipments.	Time in transit important on shipments to construction sites in order to meet construction schedules. Customers in Mississippi have complained of delayed shipments and new customers are now ordering pipe from points other than Dallas as a result. Shipper accordingly desires additional service to augment that of Red Ball and TAP.	Harris. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Expects still interchange at Jackson to reach other Mississippi points and at Mobile to reach other Alabama points.
49. (270) ... [illegible] ...filter Company, Inc., Winnsboro, Tex. Oil filters for internal combustion engines	Four shipments a month averaging 500 pounds to Birmingham, Ala., and four shipments a month averaging 195-500 pounds to Atlanta, Ga. Ships also to Miami and Jacksonville, Fla. and various other points in Southeastern United States.	The joint-line services of Red Ball - Transcon, Red Ball - Rowley, Red Ball - Brownell, Red Ball - Dixie have been used.	Has increase in business due to Government contracts. Desires direct, single-line service to Birmingham, Ala., and Atlanta, Ga. Has customer complaints of slow delivery.	Red Ball.
50. (271) L.S. Brown Paint & Supply Company, Houston, Tex. paints	Inbound shipments from Mobile, Ala., of paints, stains, and varnishes. One shipment a month of 10,000 pounds and two or three shipments a week of 500 to 2,000 pounds.	Joint-line services of West to New Orleans thence Harris. Used Harris only and Red Ball in past.	Desires second morning delivery in order to meet competition, and hopes for next-day service. Shipper complains of damage with Harris and Red Ball.	Harris. Shipper argues that he is supplied from his Los Angeles supplier more quickly than the Mobile supplier. Red Ball, Dixie-Land.
51. (272) Lawrence, Inc., Dallas, Tex. Retail store--general merchandise	Inbound LTL shipments of 10,000 pounds a month from Atlanta, Ga., and inbound shipments of 8,000 pounds a month from Birmingham, Ala.	Gardner, Rowley, Transcon, and ETAV.	Has increased business and needs inconsistent service from all existing carriers. Needs additional service particularly during peak seasons.	
52. (273) Retimes: Cash Register Company, Inc., Arlington, Tex. Printed forms, checks, and other negotiable papers	Four shipments a week to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Average weight of shipment is 300 pounds.	Joint-line service of Red Ball - Dixie and Rowley - participating carrier.	Desires single-line service.	Red Ball. Shipper wants a carrier able to accept responsibility of carrying negotiable instruments. If, then, wants single line service to limit the number of parties handling the instruments. Red Ball has provided reliable service in the past.
53. (274) Great Lakes Screw Corporation, Dallas, Tex. Metal screws primarily used by mobile home industry.	From Dallas shipments move to Atlanta, Ga., and Jackson, Miss. Shipments move to other Georgia points such as Americus, Vidalia and Valdosta.	ETAV, Red Ball, and Harris.	Desires expedited service to meet competition. Lost customers due to delayed deliveries.	Harris. Proposed service to Americus and Vidalia in two-line haul with interchange at Atlanta. Testimony restricted only with Georgia.
54. (275) Texas Employee ... Dallas, Tex. Outbound men's suits for the Farah Mfg. Co. of El Paso, Tex.	17% shipments with average weight of 350 pounds from warehouse in Dallas to Greenville, Miss.--1,500 pounds a month.	Gardner - direct single-line service. Johns was used.	Has increased business. Shipper no longer uses Johns because of poor pickup service.	Red Ball Strickland. While shipper has had difficulties in service to Greenville due to ... pick-up service by Gardner and Johns, Red Ball has provided good service to the points it is authorized to serve. Strickland has also provided good service where authorized. Shipper, however, admitted that Gardner service had improved recently.

Summary of evidence of supporting shippers—Continued

"TRAL—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
53 (274) A&B Bag Co., Dallas, Tex. Cotton piece goods	LTL shipments. Receives 2-3 shipments a month from Talladega and Birmingham, Ala., and Atlanta and Chickamauga, Ga. Some shipments are received from the Pacific Coast.	Alabama Highway, ETMF, Bowman, Transcon., Mid South, Southwestern, and R-A	Needs additional service. Transit time indicates that shipments are in transit 2 to 8 days, with most shipments in transit 4 to 5 days. One shipment from Chickamauga involved 20 days. The shipments from Birmingham and Atlanta involved 4 days.	Bowman and Strickland. Prognosis: Continue service with interchange at Atlanta or Birmingham.
54 (277) Henderson Manufacturing Company, Pittsburg, Tex. Tractor parts	Ships or causes and demands ten 20 shipments a month to Southeastern United States—usually LTL ranging from 100 to 2,000 pounds.	Joint-line service Red Ball interchanging at Memphis, Tenn., or Dallas, Tex., with ETMF, Roadway or Bowman occasionally. Southwestern Transportation originates the traffic. Private carriage is used for TL shipments.	Desires single-line service to Birmingham, Ala., and Atlanta, Ga. Business expected to increase to 75 percent due to operation of a new foundry. Wants additional service to other points, particularly those in Florida and North Carolina.	Yes. Ba.
55 (278) Wolfe Textile Company, Dallas, Tex. Outbound—sheets, towels, and draperies. Inbound—textiles.	Shipments weighing 300 to 1,100 pounds moves to points in Arkansas, Louisiana, Mississippi, and Tennessee. Inbound shipments move from North Carolina, South Carolina, Georgia, and Alabama (LTL).	Roadway, Gordons, North Alabama Express, and Red Arrow.	Shipper allows 10 days for movements from the Carolinas and 7 to 10 days for movements from Georgia.	Strickland. Strickland proposes second-morning delivery from interchange point at Atlanta. Witness appeared to have little familiarity with the shipping practices of his company.
56 (279) Friedrich Refrigerators, Inc., San Antonio, Tex. Store refrigerator counters, belt driven check out counters, heating equipment, air conditioners, bomb shields, and missile parts.	$5,000,000 pounds a year outbound from San Antonio and $1,500,000 pounds inbound. Shipments to points throughout Southeast and also beyond scope of territory herein. Between 10 and 50 shipments serves a day.	Inbound shipments from Alcoa, Tenn., interlined at Memphis by Robinson, ETMF, and Strickland. Inbound shipments from Decatur, Ala., interlined at Memphis or Dallas by Gordons and ETMF.	Desires direct service to points in Arkansas or U.S. Highway #3 and to Atlanta and Birmingham. Time in transit important because many shipments to supply warehouses are on emergency basis. Alleged that on many occasions shipper was not tendered service available to it.	Strickland. Plans to route traffic over the Birmingham gateway.
57 (280) Texas Wholesale Jewelers, Dallas, Tex. Electrical appliances, radios, televisions, silverware, clocks, paper and plastics.	From shipper's facilities at Dallas and Houston, Tex., 1,000 shipments a month average weight of 170 pounds to all points in United States—most shipments from Dallas, but some from Houston.	Red Ball, ETMF, and Mercury. Interline shipments to Arkansas along U.S. Highway #3, which Strickland will serve direct.	Complains of poor service, particularly to Jackson, Miss. Need for expedited service in seasonal periods, i.e., Mother's Day.	Strickland. Transit time study indicates that Red Ball has provided 2-day service to Jackson on most occasions although one shipment took 5 days. Shipper is not satisfied with 2-day service.
58 (281) Whitworth Carpets, Fort Worth, Tex. Carpet in rolls.	Inbound shipments of 10,000 pounds a month, with average weight of 650 pounds from Chamblee, Atlanta, Cartersville, Lafayette, Lyerly, and Trion, Ga.	Joint-line service of Baggett to Birmingham, Gordons to Dallas Central, Roadway and Georgia Highway Express. Three line service of Baggett-Gordons-Central or Roadway.	Desires single-line service. Lost sales due to 10-day transit time. Desires faster service to reduce inventory.	Baggett.
59 (283) Auto Air Accessories, Inc., Dallas, Tex. Automobile air conditioners and parts.	Ships to Miami and St. Petersburg, Fla. Nashville, Tenn., Birmingham, and Mobile, Ala., and to points in the Northeast such as New York City and Boston, Mass.	Joint-line service origin carriers are Mercury, Herrin, and Transamerican.	Time in transit important during peak season due to expected increase in business. Desires consistent overnight service to Birmingham, 3-day service to St. Petersburg, and 4-day service to Miami and New York.	Bowman, Johnson, and Jones. Shipper admitted to being basically satisfied with existing service, although there were several instances of delays.
60 (284) Vernon Manufacturing Co., Dallas, Tex. (Pine) bath tubs and lavatories.	Ten TL shipments a month destined to Birmingham, Ala., Atlanta, Ga., and Jackson, Meridian, Greenville, and Greenwood, Miss., from Dallas and Nacogdoches, Tex.	Private carriage is used. Mercury direct to Birmingham, United and Gordons to Greenville.	Would like to eliminate private carriage.	Strickland. Wants overnight service to Jackson, 2nd morning service to Birmingham, and 3-day service to Atlanta.
61 (286) Lorlon Surgical Manufacturing Company, Texarkana, Tex. Sick room supplies, canes, crutches, walkers, and safety rails.	Ships LTL shipments to Birmingham, Montgomery, Ala., Blythville, Fayetteville, and Jonesboro, Ark., Atlanta, Chamblee, and Macon, Ga., Greenville, Miss., Jackson, and Memphis, Tenn., and various other points in Kansas, Oklahoma, and Missouri.	Strickland, ETMF, and Arkansas-Best Freight in single and joint-line service.	Testified to instances of lost accounts due to delays in service or damage to shipments. Has used both single- and joint-line service and prefers single-line because of greater consistency of service.	Jones and Bowman. Transit time study shows mostly satisfactory service but with some extreme examples of delays, i.e., 18 days to Atlanta and 22 days to Memphis.
62 (287) Lummus Cotton Gin Co., Dallas, Tex. Cotton gin machinery.	LTL traffic from Columbus, Ga., to Dallas, Tex. Shipments move from factory at Columbus to warehouse at Dallas. Between 7/31/64 and 8/14/64 shipper received 30 shipments totaling 58,810 pounds.	Direct line service of Roadway. Joint-line service of Baggett-ETMF and Cole-Herrin.	Needs expedited service on repair parts. Desires to reduce inventory at Dallas warehouse.	Bowman. Transit time study indicates that 5-day service is normal but that service on at least one occasion was 14 days.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper	Origin, destination, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
[illegible]	[illegible] tons from Dallas to Pasadena	[illegible] service [illegible] Herrin, [illegible], Texas, [illegible] carriers, and [illegible] transport, Inc., Tyler, Bowman, [illegible] Rish., [illegible] are used	[illegible] Dallas shipper [illegible] that transit time [illegible] frequent complaints from customer about delays in service. Desires single-line service and fourth-morning delivery.	Bowman. Bowman has assured shipper fourth-morning delivery.
[illegible] Texas, [illegible] women's ready to wear [illegible] thousand-piece goods	Most shipments weigh [illegible] pounds, ships [illegible] points in the Southeast. [illegible] shipments from [illegible], [illegible], Greenville, [illegible] and Harrisonburg, S.C., Tuckin, Kings Mountain, Edenton, and Winston-Salem, N.C., and points in New Jersey and New York City.	Brown, Roadway, REA, Strickland, ETMT, Gordons, Transcon, Red Ball and Greyhound Bus	Has [illegible] growth. [illegible] transit important because sales are tied to advertisement schedules. Shipper's transit time study shows that it is receiving generally [illegible] service from the [illegible] service from Georgia [illegible] service from [illegible] New Jersey.	Bowman, Jones, Johnson.
[illegible] Industries, [illegible], Texas, [illegible] machine [illegible]	Ships [illegible] to [illegible] weight [illegible]	Fairburn, Mercury, Pacific, ETMT are used in joint-line service. Single-line service to some points in Carolinas by Roadway.	Has increased business from [illegible] service and customer complaints of delays.	Bowman, Johnson, and Jones. Shipper seems most interested in service to Atlanta, which can be handled in single-line service by several protestants.
[illegible] Auto Division of [illegible] Division, [illegible], Texas. [illegible] and speedies	[illegible] shipments from Dallas to [illegible]	Ryder, Red Arrow, Motor Express, Brown Express are used in [illegible] service with interchange at Houston.	Exports increase business. Existing service is inadequate [illegible] with outstanding [illegible].	Bowman. Transit time study shows service ranges from 4 to 14 days with the average transit time being about 9 days.
[illegible] Yard Products, Inc., Dallas, Tex. Automotive [illegible] and parts	From Dallas to points in North Carolina, South Carolina, Georgia, Florida, Arkansas, Alabama, and Baltimore and Silver Spring, Md. Four to five shipments a week to each point and frequency increased from May to July. Most shipments weigh about 100 pounds. Shipments are made to Atlanta warehouse. Shipper had experienced a 10 percent growth in business in the year before the hearing and expects the increase to continue.	Mercury-Johnson and Mercury Texas.	Does not have 2-day service.	Bowman, Johnson and Jones. Shipper unhappy with service to Florida because Carolina holds shipments on its dock.
[illegible] Co., Wilson Company, Inc., Dallas, Tex. Wilson and Bowes	Dallas between 11/1/55 and 7/29/56 shipper had 21 movements weighing an average of 2,443 pounds to Brooklyn, N.Y., South Hill, Va., Rock Hill, S.C., and Chattanooga, Tenn. Between March and July 1956 it had 22 shipments weighing 18,537 pounds from Chattanooga, Tenn.	Robinson Freight originates shipper's traffic from Chattanooga and interlines it at Memphis, Tenn., with East Texas and Jordan, Mo. Ledger uses TNT because transit [illegible] Texas to [illegible]	Transit time is important because of the fast turnover of shipper's commodities, the low inventories maintained by its customers, and a highly competitive market. Transit times to Memphis range from [illegible] to 6 days at interchange point and 1 [illegible] days to destination.	Bowman and Johnson.
[illegible] Stencil Service, [illegible] Investment Companies, Inc., Division of [illegible] Merchants and Mfg. Co., Dallas, Tex. Draperies, piece goods, and rayon [illegible]	Inbound to Dallas shipments are received from specified points in North [illegible], South Carolina, Georgia, Massachusetts, New York, Pennsylvania, [illegible], Virginia, and Louisiana.	Jordan, Ryder TLT, PHI, Pilot, and Texas, New Dixie, Smith, Fullmer, Trucking, Bowman, Rocket, Prairie, G&P, Liberty, Spector, Overnite, and Associated originate shipper's traffic. Acme, Central, East Texas, Gordons, Red Arrow, Red Ball, Roadway, Strickland, TCE, Transcon, and Viking deliver interlined shipments. Acme, Braswell, East Texas, Herrin, Republic, Roadway, and Strickland are used in single-line service. Has private carriage also.	[illegible] transit times important in order to maintain [illegible] inventories. Transit time study indicates shipments from Northeast range from 5 to [illegible] days and from Southeast 2 to 10 days with one interlined shipment from Old Fort, N.C., taking 21 days.	Bowman and Johnson.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
70. (296) Cole's Machine Shop, Dallas, Tex. Air Conditioning component parts	From Dallas to Miami and Tampa, Fla., shipper had 16 movements between January and June 1966. Between 60 and 70 percent of shipments must be delivered by a deadline date.	Herrin - Joint-line service with interchange at Atlanta	Desires 4- or 5-day service to Miami and Tampa, presently operates on 10- to 14-day. Lead time on shipments covered by Herrin. Some all conditioners made to order, that had a deadline delivery date, had to work overtime. If transportation time could be cut, overtime could also be cut resulting in substantial savings.	Bowman.
71. (297) Paige & Company, Inc., Dallas, Tex. Carpets and furniture	Inbound to Dallas traffic moves from specified points in Georgia, and North and South Carolina. Between January and July 1966 it received shipments from Calhoun, Dalton, Bogart, and Rossville, Ga.; Goldsboro, and West Jefferson, N.C.; Nashville, Tenn.; and Selma, Ala.	During the aforementioned 7 month [illegible] originated most of the listed Georgia shipments. Georgia Highway, Ryder, and ETHOK originated a few of the listed Georgia movements. B.C. interlines with Mercury at Birmingham, Ala. Thurston interlined with Red Ball at Memphis in a movement from North Carolina. Cole interlined with Red Ball and East Texas on three shipments from Nashville, Tenn. McLean interlined with Transcon on a movement from West Jefferson, N.C. Also uses private warriage.	Transit time important on [illegible] study, mostly on shipments from Georgia points indicates transit time of 3 to 10 days with most shipments taking 5 to 6 days.	Bowman, Johnson, and [illegible]
72. (298) Harry Davis of Dallas, Inc., Dallas, Tex. Inbound - unfinished piece goods and materials used in the manufacture of blue jeans. Outbound - cotton work clothing	Inbound shipments from Charlotte, N.C., Greensboro and Rockhill, S.C., Lindale, Ga., and Danville, Va., to Dallas, Tex. 3 to 5 TL a week. Outbound LTL shipments from Dallas and Breckenridge, Tex., to points in Arkansas, North Carolina, Georgia, Maryland, Florida, Virginia, South Carolina, and Northeastern States.	Inbound carriers are Transcon, Georgia, Strickland, Roadway (joint-line with various originating carriers). Outbound carriers are Jones to Arkansas, Roadway to Carolinas, Transcon and Roadway to Georgia, Mercury to Florida, Roadway, Strickland, and Yellow Transit to Maryland, Virginia, and Northeast. Breckenridge traffic transported to Dallas by Merchants Fast Motor Lines.	Time in transit important on inbound shipments in order to get piece goods into production. Desires 2-day service from Carolinas to Dallas.	Bowman, Johnson, and Jones.
73. (300) Whitehall Laboratories, Inc., Dallas, Tex. Drugs and medicines	Inbound to Dallas shipper receives a total of about 300,000 pounds a month, all in TL lots from Hammonton, N.J., and Milford, Bridgeport, Conn.	Sealand, Piggyback Plan service, and Johnson to New Orleans, La., thence Red Ball to Dallas	Shipper requires protective service on about 3 to 5 percent of its traffic both during the summer and winter months.	Bowman and Johnson.
74. (305) American Screen Manufacturing Company, Dallas, Tex. Screens, windows and parts and curtain walls	From Dallas shipments move three or four times each week to Birmingham and Mobile, Ala., Jackson, Miss., and Atlanta, Ga. Shipments range in size from 100 pounds to 5,000 pounds. Inbound shipments of steel from Monroe, La., to Dallas, Tex.	Gordons, Red Ball, Roadway, and Transcon. Herrin is used inbound.	Time in transit important to meet contractor deadlines. Desires 2 or 3-day service. Complains of delayed pickups by existing carriers.	Herrin. Herrin's inbound service considered very satisfactory.
75. (306) Columbia Records Company, Dallas, Tex. Phonograph records and phonographs	From Dallas shipper has daily movements to Jackson, Miss., and Mobile, Ala., the shipments weigh between 60 and 200 pounds.	Red Ball, Gordons, and Braswell.	Need for expeditious transportation to get records on market during short period of peak demand. Wants overnight service to Mobile.	Herrin.
76. (307) Mathes Air Conditioning Company, Dallas, Tex. Air conditioning units and parts	From Dallas shipper has daily movements weighing from 100 to 1,000 pounds to Birmingham, Mobile and Montgomery, Ala., and Atlanta and Columbus, Ga., and Jackson, Miss.	Gordons, Mercury, and Red Ball.	Wants expedited service particularly on repair parts.	Herrin.
77. (308) Beaumont, Tex.	See shipper under Georgia heading			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

[illegible]	Description of shipper's traffic	Existing service utilized	Reasons for supporting application	Applications supported and remarks
[illegible]	[illegible] Atlanta, Ga., moved about 1,200 pounds to Atlanta, Ga., and 1,300 pounds to Birmingham, Ala. Additionally it ships about 1,500 pounds a month to points in North and South Carolina, Georgia, and Alabama. Occasionally it has a shipment to Greenville, Miss. The shipments weigh from a minimum to a maximum of 3,370 pounds.	Red Ball is the joint-line carrier. Connecting carriers are Porter and its extra board and Redman and as delivering carriers.	Transit time is important because if machinery parts are not received shipper is shut down. Shipper prefers single-line service because of the transit time and tracing factors. Wants 1-day delivery from Atlanta.	Red Ball.
[illegible]	From Dallas shipper moves about 1,000 pounds to Atlanta, Ga., and 1,300 pounds to Birmingham, Ala. Additionally it ships about 1,500 pounds a month to points in North and South Carolina, Georgia, and Alabama. Occasionally it has a shipment to Greenville, Miss. The shipments weigh from a minimum to a maximum of 3,370 pounds.	Red Ball originates [illegible] of shipper's outbound traffic. The connecting carriers are either decided by Red Ball or Transcon is specified.	Wants single-line service because customers, particularly from Eastern States, have complained of delays. Those delays occur at the interchange point.	Red Ball.
[illegible]	From Tyler, [illegible] and Atlanta, Ga. During March 1968 shipper moved 199,478 pounds by Red Ball. While only a rota. of 2,603 pounds of this amount were destined to the three major points, an additional amount was shipped to points that normally would be interchanged in Atlanta.	Red Ball originates [illegible] shipper's outbound traffic.	Shipper wants single-line service to the aforementioned points. It indicates that transit time is important because rose bushes are perishable items.	Red Ball.
[illegible] Industries Company, Dallas, Tex. Automotive shapes and extrusions	Between Dallas and Atlanta, Ga. Shipper receives inbound at Dallas from Atlanta about 2,000 pounds a month and it ships outbound from Dallas to Atlanta about 1,000 pounds a month. The average shipment weighs 200 pounds and shipments move once or twice a week in each direction.	East Texas. The joint-line services of Roadway, Jordens, Red Ball are also used.	Shipper uses Red Ball to points in the area it serves from Dallas on a daily basis. It wants to limit the number of carriers it uses and relieve the congestion at its docks.	Red Ball.
[illegible] Pear, Inc., Dallas Company and Pear Pat Company, Houston, Tex. Fixtures and parts	From Houston shipper has daily movements to Atlanta and Columbus, Ga., Birmingham, Mobile, and Montgomery, Ala., and to other points in Georgia, Mississippi, and Alabama. The shipments weigh between 170 pounds and 1,000 pounds with the average shipment weighing about 421 pounds. Between 6 and 10 shipments move daily. From Fort Worth to points in Arkansas, Mississippi, and Louisiana. Shipper has about 500 LT. shipments a month with an average weight between 200 and 2,000 pounds.	Herrin is used to points in Georgia, Alabama, Mississippi, and Florida. Inbound shipments are handled by Gordons and Roadway in joint-line service. Private carriage is used. Southwestern, CTNF, Herrin, Red Ball, Brannon, and T&P Motor Freight, joint-line with interchange at New Orleans.	Desires 2nd-morning delivery on inbound shipments from Atlanta. Wants single-line service on outbound shipments because of damage problems.	Herrin.
[illegible] Texas Refinery Corp., Fort Worth, Tex. Chemicals and petroleum products	Inbound to Dallas shipper receives anywhere between 1 to 200 movements daily weighing between 1 pound and 90,000 pounds from points in the Midwest, East, and Northeast. Outbound shipments vary in number from 1 to 375 daily and in weight from 1 to 60,000 pounds, and move to destinations throughout the United States and foreign countries.	Red Ball, East Texas, Transcon, Herrin, Gordons, Strickland, Air Lines, Dub Lines, and RLA.	Wants overnight service from Jackson, Miss., to Dallas. Has had difficulties with pick up service of existing carriers. Transit study of 31 shipments from Jackson to Dallas, handled by Red Ball indicates average transit time of 2 to 3 days, with 6 shipments taking 4 or more days.	Strickland.
[illegible] Engineering Division of [illegible] Engine Company, Dallas, Tex. Inbound material and supplies for air-conditioning and refrigeration equipment. Outbound air conditioning and refrigeration equipment and parts.	From McKinney shipper moves between 50 and 100 shipments a month with an average weight of 200 pounds a shipment to Magnolia, El Dorado, Crossett and Camden, Ark.	Joint-line service with interchange at Dallas and Central as the origin carrier.	Desires next-day service to southern Arkansas.	Strickland.
85 3171 A [illegible] Wagner Company of Missouri, McKinney, Tex. Sewing machines.	From Dallas to Tampa and Miami, Fla. During August 1968 approximately 7,500 pounds were shipped to Tampa. The tonnage to Miami is approximately the same. Shipper expected to double its traffic to Tampa and Miami by 1971.	Mercury, Red Ball, Herrin, and Transcon originate shipper's traffic.	Shipper lost the Food Fair account in Miami due to slow transportation service. It wants consistent 3-day service to Miami and desires consistent service so that it does not have to maintain a warehouse in Miami.	Brannon.
86 [illegible] 3131 Post-Guard Products, Inc., Dallas, Tex. Plastic and paper shelf lining, and insecticide				

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applications supported and remarks
87 (319) Sun A Mfg Company, Inc., Garland, Tex. Louvered products, bi fold doors, interior and exterior shutters, and interior doors	Shipper operates a warehouse at Charlotte, N.C. and is opening one at Atlanta, Ga. Shipments are from Garland, Tex., to these warehouses and also directly to customers located throughout the South east, as well as other parts of the United States. An additional warehouse operation is planned for Fort Lauderdale, Fla.	Roadway and ETHF are originating carriers.	Transit time is important because shipper has a great deal of competition in the Southeast. It wants 2-day service to points in North Carolina, South Carolina, Georgia, and Florida.	Johnson and Bowman.
88 (320) Laura of Dallas, Inc., Dallas, Tex. Hooking and synthetic piece goods	Inbound to Dallas shipper receives movements from points in North and South Carolina. Between January and August 1966 shipper received deliveries of movements from Kings Mountain, Pea Creek, Morganton, Henderson, Yadkin, Biltmore, Old Fort, Greensboro, and Boger City, N.C.; and North Charleston, Morgantown, Blacksburg, Rock Hill, Carlisle, Tyger, and Travelers Rest, S.C.	Roadway in single-line service. Occasionally Thurston interlining with East Texas, Huckabee, interlining with East Texas, overnight interlining with East Texas, McLean interlining with Gordons, and Dixie interlining with Gordons are used at the supplier's direction.	Time in transit is important factor in shipper's manufacturing process. Desires single-line service. Needs more consistent service so that production plans can be maintained. Desires overnight service.	Bowman, Johnson, and Jones.
89 (321) Automatic Transmission ... Dallas, Tex. Automatic transmission parts	Between Dallas and Miami, Fla. Inbound to Dallas from Miami shipper averages about 500 pounds a month. The shipments weigh between 90 pounds and 200 pounds each. It receives 2 to 6 shipments a month from Miami.	Southern Plaza, Mercury, Herrin, and Branwell.	Shipper does not want to plan on more than 7 days lead time for shipments to Miami. It prefers single line service to reduce handling of shipments.	Bowman.
90 (322) Dresher Manufacturing, Inc. Dallas, Tex. Headboards	From Dallas to points in Alabama, Arkansas, Georgia, and Florida. Between 9/1/66 and 9/21/66 shipper had movements to Tampa, Miami, Fort Pierce, Lakeland, Orlando, Fort Myers, Gainesville, Jacksonville, Daytona Beach, Oakland Park, Rockledge, Pensacola, and Panama City, Fla., Atlanta, Columbus, Augusta, Rome, Marietta, Macon, Savannah, and Albany, Ga.; and Decatur, Mobile and Anniston, Ala.	Mercury, with one exception, originated all of the described shipments during the aforementioned period.	Shipper expresses a need for the proposed 2-day service to Alabama and Georgia, the proposed 3-day service to Florida, and the proposed overnight service to Arkansas as it prefers single-line service in order to facilitate tracing of shipments.	Bowman, Johnson and Jones. Shipper's consignee has the right to require it to discontinue routings if the consignee so desires.
91 (329) Texarkana, Tex.	See summary of evidence under Arkansas heading.			
92 (332) Houston and Dallas, Tex.	See shipper under Louisiana heading.			
93 (336) A.R.A. Manufacturing Co., Inc., Grand Prairie, Tex. Automobile air conditioners	From Grand Prairie to points in Mississippi, including Jackson, to points in Alabama, including Birmingham, Mobile, and Montgomery, and to Atlanta, Ga.	Red Ball, East Texas, and Transcon.	Shipper needs a consistent service to meet construction schedules. It desires second morning service to Atlanta on LTL shipments and first afternoon on truckload. Desires first morning to Birmingham on TL and first afternoon on LTL. Transit time important since many customers tend to be "impulse buyers."	Herrin and Red Ball.
94 (339) Reynolds Aluminum Supply Company, Dallas, Tex. Outbound: industrial metals and building products. Inbound: aluminum sheet, rods, and bars	Inbound to Dallas TL and LTL shipments are received from Litterhill and Birmingham, Ala., Atlanta, Ga. and points north of these gateways. Shipments weigh between 100 and 30,000 pounds. It receives 15 shipments a week inbound from Birmingham and Atlanta.	East Texas, Transcon, Gordons, and Mercury.	Shipper needs consistent service to maintain inventory. It desires second-morning delivery on LTL shipments from Atlanta to Dallas and first afternoon service on TL. Transit study indicates existing service of 4 to 5 days from Atlanta and Birmingham, with a few shipments made in 2 or 3 days and a few others in 7-8 days.	Strickland and Herrin.
95 (341) Aircrex Company, Dallas, Tex. Aircraft parts and materials	Inbound to Dallas shipper receives between 1,000 and 10,000 pounds each week from Birmingham, Mobile and Montgomery, Ala., and from Atlanta, Ga.	Mercury, Transcon, and Roadway.	Shipper allows 6 to 7 day lead time on shipments from Atlanta, Montgomery, and Birmingham, and 3 to 4 days from Mobile. It desires second-morning delivery on LTL shipments from Atlanta, first afternoon service from Birmingham, and Montgomery and first-morning service from Mobile. Transit times important since inbound parts are purchased from the government for cash, and this cash remains tied up until the ultimate sale is made to shipper's customers.	Herrin.
96 (343) Shaw-Walker Company, Dallas, Tex. Metal office furniture	Inbound to Dallas shipper receives about 3 shipments a month from Atlanta, Ga., weighing between 150 pounds and 2,400 pounds. Outbound shipper makes weekly shipments from Dallas to Atlanta, Jackson, Miss., and Birmingham, Ala. weighing between 150 pounds and 2,500 pounds.	Herrin is used on an interline basis on outbound shipments and East Texas on inbound shipments.	Single-line service is desired. Shipper wants second-morning service from Atlanta on LTL shipments and first-afternoon service from Birmingham. Using applicant in joint-line service transit times are about 4 days.	Herrin.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
[illegible]	[illegible] orders are received at varied times at varied intervals [illegible] Harbor Travelers Fast, and [illegible] Bucks Mount, Shelby, and Burnham, [illegible] and Laporte, Ind. The [illegible] pound shipments are received daily and weight between 100 and 1,000 pounds. Shipments are made to points in Louisiana, Texas, Alabama, [illegible] Tennessee and Arkansas. These shipments [illegible] weigh between 100 pounds and 3,000 pounds.	[illegible] Texas, Red Ray, Transport, [illegible] Strickland, Herrin, Red Ball and Branch.	Transit time [illegible] day service from Atlanta by ETMT. Service from Carolina ranges from [illegible] days. These times are [illegible] weekends.	Herrin
[illegible] A Herrin shipper moves about 10,500 pounds a month to Birmingham, Ala. and 7,000 pounds a month to Greenville, Miss. The average weight of each of these shipments is about 800 pounds. Shipper has projected its business to increase 10% per month with a few months of the [illegible]. Most of the shipments are LTL.	Red Ba... Southern Pacific Transport, Texas & Pacific Motor Transport, Roadway, and Strickland	Transit time is important to shipper because 25 to 40 percent of its product is sold to contractors and it must deliver within 3 weeks of the order. Many of its customers face penalty clauses for [illegible]. Shipper wants direct service to Atlanta by a carrier with terminal facilities in Paris. Shipper desires better service between Dallas and Atlanta, so that overall transit times from textile mills in Carolinas and Georgia to Dallas, and shipments from Dallas to points in Louisiana [illegible] Atlanta [illegible] be reduced.	Red Ba...
[illegible] receives traffic from points in North and South Carolina, Alabama, and [illegible] weighing about 100,000 pounds a month with the average shipment weighing between 200 pounds and 800 pounds. Additionally many shipments are made direct from points in the above described states to points in Louisiana, Arkansas, & Texas. During [illegible] and August 1968, [illegible] shipments weighing [illegible] pounds were made to Louisiana, 15 shipments weighing [illegible] pounds were made to Arkansas, and a shipment weighing [illegible] pounds were made to Texas. Representative destinations [illegible] are [illegible], Haynesville, Homer, Mansfield, Gibsland, Jonesville, Ringgold, Plain Dealing, Baton Rouge, Morgan City, [illegible] Logansport, La., Hamburg, Hoot...ville, and Nunnerry, Ark., and Buffalo, San Augustine, Port Arthur, Cooper, and [illegible], Tex. Shipments are almost always [illegible].	Jerr-Dixon Atlanta shipments between Dallas and Memphis. From Atlanta it uses Jordan, T.I.M.E., Transcon, Lee Transport, and others.	Shipper wants single line service to Atlanta in order to reduce transit times and facilitate tracing on shipments dropped off at points between Nacogdoches and Atlanta.	Bowman, Johnson and Dow Ball
[illegible] plant in Nacogdoches, Tex., [illegible] area	From Nacogdoches shipper has traffic moving to Atlanta, Ga., and occasionally to Greenville, Miss., and Birmingham, Ala. It averages about 4,000 pounds to 5,000 pounds weekly to Atlanta. It also ships to Roanoke, Va., about 5,500 pounds a week, Charlotte, N. C., about 4,500 pounds a week, and Pinellas Park, Fla. (about 4,500 pounds a week)	Red Ba... originates all of shipper's outbound traffic. To Atlanta it interlines with Ryder or Lee Texas. To Charlotte it interlines with Bycer. To Roanoke it interlines with Ryder or Mason & Dixon. To Pinellas Park it interlines with Ryder.	Shipper wants single line service to Atlanta in order to reduce transit times and facilitate tracing on shipments dropped off at points between Nacogdoches and Atlanta.	Red Ba... Although Red Ball does not propose a single line service to Roanoke, Charlotte, or Pinellas Park, shipper wants a greater selection of delivering carriers over the Atlanta gateway
[illegible] Co. (351), Lo...ta Quality Products Company, Lo...as, Tex [illegible] steel tubing and cut and [illegible] new assemblies [illegible] (356) John Killian Company, Lo...as, Tex Wallboard and chalking compound [illegible] (357) Nacogdoches, Inc., Dallas, Tex Shoe repairing supplies	From Dallas to Birmingham, Ala., Atlanta, Ga., Jackson, Miss., some points in North and South Carolina, and points in Georgia. Shipper has between 4 and 8 movements a month, which weigh between 300 and 400 pounds each.	Jordanna, Transcon, Mercury, Roadway, and Red Ball	Shipper has experienced a growth in business and needs additional shipments to points in Georgia and Alabama.	Strickland
[illegible]	From Trenton, N.J., and Baltimore, Md., to Dallas. Shipper receives two or three shipments a month from Trenton, weighing from 4,000 to 5,000 pounds. Shipper is not receiving anything from Baltimore, Md., now, but expects to receive four or five shipments a month.	Roadway, Sporton, and ETMT	Wants faster service. Wants single-line service. Shipper wants 4- or 5-day service from New Jersey.	Johnson and Bowman Several existing carriers have not been tried
[illegible]	From Atlanta, Ga., Chattanooga, Tenn., Baltimore, Md., and Philadelphia, Pa., to Dallas for the year 1967 and a portion of 1968 shipper received 36 shipments. Average weight 600 pounds.	Roadway, Cole, Bowman, ETMT, Acme, Republic, Universal, Red Ba..., ETMT, and Strickland	Wants faster single-line service from Atlanta goes up to 7 days, 6 days from Chattanooga, and up to 10 days from Baltimore. Times include weekends. Wants proposed 2-day service from Atlanta and Chattanooga and 3-day service from Baltimore.	Bowman, Johnson, and Jones
[illegible] (358) Frozen-Rite Products, Dallas, Tex Frozen Bakery items	From Dallas to points in Georgia, Virginia, Alabama, and North and South Carolina. Ships approximately one or two TL to the above areas a week.	TFT, Refrigerated Trans., and Frigid Food	Needs reliable refrigerated service. Difficult to obtain adequate equipment. Wants [illegible] Bowman a least once a week for service to Atlanta and Birmingham and Johnson and Bowman single line service to Georgia and Virginia.	Johnson, Bowman, and Jones. Most protestants cannot provide refrigerated service by LTL refrigerated service to Birmingham. Requires refrigerated equipment.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services used	Reasons for supporting application	Opposition supported and remarks
106. (359) Rubbaglo Sales Co., Dallas, Tex. Tread Rubber	From Dallas to points in Alabama, New York, Pennsylvania, Florida, Tennessee, Maryland, Georgia, New Jersey, and North and South Carolina. From 8/1/64 to 8/30/64 shipper transported 45 shipments to above states. Average weight was about 400 pounds.	Mercury, Gordons, Transamerican, Roadway, Transcon, Old Continent, and Red Ball.	Wants faster, single-line service. Wants faster service.	Brown, Johnson, Jones and Jones.
106. (360) Sherwood, Inc., Dallas, Tex. Carpet Rolls	From Talmage and Cartersville, Ga., to Dallas. Receives 50,000 pounds each month from above points. From Dallas to Ft. Worth, Ark. Ships four or five times a month. Average weight 750 to 900 pounds.	Red Ball, Mercury ETMF, Transcon, Roadway, Central, RLA and Baggett.	Wants faster service. Wants single-line service. Wants delivery weekends. Wants faster service from Cartersville. Wants single-line service which guarantees a faster and more consistent Wants 2-day service from New England points and 3-day service from Mid-Atlantic [illegible] transit time is now between 4 and 7 days including weekends, on shipments from points in this area.	Brown and Johnson. Favors existing carriers can provide single-line service.
107. (361) Levines, Inc., Dallas, Tex. Retailer-Items	From New England, and the Middle Atlantic States to Dallas. From January, 1961 thru June 1961 shipper received 72 shipments with an average weight being 400 pounds.	Roadway, Bowne, Modern, Nemsker, Pollmer, Branch, Keystone, Ward, Hiran, Old Colony, Motor, Morse, and Merr.	Wants better service. Allows 7 to 10 days to points in Alabama and Georgia and up to 13 days to points in Florida. Wants third or fourth-day delivery as proposed by applicants.	Brown, Johnson, and Jones. Shipper stated that Red Ball is a reliable and dependable carrier. Existing service is satisfactory.
108. (362) Williamson Simkin Mfg. Co., Fort Worth, Tex. Clothing.	From Fort Worth, Tex. to points in Alabama, Florida, and Georgia. From 5/2/64 to 5/31/64 shipper transported in excess of 100 shipments with an average weight of 100 pounds.	Mercury and Red Ball.	Wants better service. Allows 7 to 10 days to points in Alabama and Georgia and up to 13 days to points in Florida. Wants third or fourth-day delivery as proposed by applicants.	Brown, Johnson, and Jones. Shipper advises that he is not fully acquainted with carriers existing authority to originate shipments at Cartersville, Ga.
109. (363) Fort Worth Carpet Co., Fort Worth, Tex. Carpets	From Dalton and Cartersville, Ga., and Chattanooga, Tenn., to Fort Worth. Receives 20,000 pounds a month from Dalton and occasional shipments from Chattanooga.	Roadway, Baggett, United, Gordons, Ryder, Newman, Mercury, Central, ETMF, Norris, Red Ball, and SAT.	Wants faster transit time. Wants 2- or 3-day service as proposed.	Brown. Shipper advises that he is not fully acquainted with carriers existing authority to originate shipments at Cartersville, Ga.
110. (364) Crown Machine and Tool Company, Arlington, Tex. Plastic items.	From Arlington, Tex., to points in Alabama, Florida, Georgia, Arkansas, and North and South Carolina. From 6/2/64 to 8/27/64 shipper transported almost 150 LTL shipments, average weight was about 150 pounds.	Marvin, Broadway, Red Ball, Transcon, ETMF, Strickland, and SAT.	Wants consistent and better transit time. Has had numerous customer complaints relating to shipping delays. Allows 4- or 5-days for Birmingham and Atlanta shipments. Other points in Georgia require one more day. Generally allows 7 or 8 days to Carolinas and Florida. Wants single-line service.	Jones, Bowman, and Johnson. Shipper was unaware of the fact that Marvin can perform a single-line service to several points. Shipper has many existing carriers available to it.
111. (365) Wendig's, Fort Worth, Tex. General dry goods.	From points in Georgia, North Carolina, South Carolina, Tennessee, and Virginia to Fort Worth. Receives 100,000 pounds a month from the above States. In June 1964 shipper received 96 shipments.	ETHMC, Northern, Pulaski, Overnite, Thurston, Carolina, Catawba, Bowman, Cole, Brasswell, ETMF, Eastern, Roadway, TCT, Federal, Perkins, Harper, Standard, Piedmont, Victor, Eaton, Ray, Murdock, Transcon, and Georgia Highway.	Existing transportation service was inconsistent. Needs faster service to meet the demands of advertised sales. Most shipments are delivered between 4 and 5 days including weekends. Wants consistent 4-day service from all points.	Johnson and Bowman.
112. (366) Burke Division Brunswick Corporation, Dallas, Tex. Fiberglass and aluminum furnishings.	From Dallas and Houston, Tex., to points along the eastern seaboard. Ships about 10 LTL shipments a day to all 50 States. Average weight is 250 to 300 pounds (LTL). From 2/15/64 to 8/30/64 shipper had almost 75 shipments to points on the eastern seaboard.	Transit time too slow. Shipper allows 7 days from Dallas and Houston to points in Florida, the Carolinas, and Georgia. It wants faster service.	Johnson, Bowman, and Jones.
113. (367) Guild Ind. Inc., Dallas, Tex. School Furniture.	From Dallas to points in the eastern seaboard. From 5/13/64 to 9/29/64 shipper had over 40 shipments to the destination territory. Average weight 400 pounds.	Consolidated, Strickland, Yellow, Morris, Roadway, Central, Red Ball, and ETMF.	Needs fast deliveries in order not to forfeit performance bonds. Allows 7 to 9 days transit time for shipments to Carolinas, Maryland and eastern Pennsylvania. Has received many complaints on late deliveries. Wants single-line service.	Johnson and Bowman.

summary of evidence of supporting shippers—Continued

TYPES—Continued

Shipper (area or commodities)	Origin, destination, volume, type of service	Existing carrier or competition	Reasons for supporting	Qualifications supported or other comments
	From points on the eastern seaboard to Dallas, from July through August 1964 shipper received about six shipments (LTL, weighing an average 150 pounds	Aero Mayflower, National Republic, Texas Transcontinental, Red Ball, Seaboard, Consolidated, ABF and Brown	Wants faster transit time and prefers single-line service Average transit time 4-7 days including weekends	Herrin Transport and Jones Shipper was unaware that Herrin can serve some points directly
	From North Carolina, South Carolina, Georgia, and New York to Dallas From Dallas to points in Georgia between 1965 and 9/20/66 shipper received 6 shipments from North Carolina totaling 1,435 pounds Also, during this period it received 18 shipments from South Carolina totaling 2,362 pounds 18 shipments from Georgia totaling 9,337 pounds 6 shipments from New York totaling 1,040 pounds	Transcon, Strickland and Roadway	Wants faster and more consistent transit time including weekends average transit time is 5 days	Jackson and Herrin service from Atlanta is satisfactory Shipper does not route all traffic
	From Georgia, South Carolina, and Tennessee to Dallas Receives two or three shipments a week from Chattanooga, Tenn 200 to 4,000 pounds Receives one shipment a month from McRae, S.C. Receives one shipment a month from Jacksonville, Ala 1,000 pounds LTL	CMW, ETMY, RFA, ATL [illegible] order, and TVX	Wants better transit time or reduction Prefers single-line service Average transit time 8 3 days including weekends	Strickland, Transcon, and Jackson Shipper does not route all shipments
From Fort Worth, Tex to Jackson, Miss Ships five to eight shipments a month to above-described point Each LTL shipment weighs a [illegible] pounds	Red Ball and Transcon	Needs faster deliveries because of tight inventory Allows three to five days for ship wants moving to Jackson Wants [illegible] service	Strickland Transit time is three to four days currently
From Ferris, Tex to Greenville and Jackson, Miss , Birmingham, Ala , and Atlanta, Ga	Central and Strickland	Wants consistent single-line service	Strickland No volume figures given
From Fort Worth to Atlanta, Ga Ships 20,000 pounds in LTL lots monthly to Atlanta (three or four shipments monthly) Ships to Greenville two times a month, about 30K to 50K pounds	Transcon and Roadway	Wants to open up sales in Greenville and Jackson, Miss. with Strickland's proposed service Existing service is inconsistent and too slow No transit times given	Strickland
From Atlanta, Ga to Amarillo 12,600 pounds a month, and occasionally receives shipments from Birmingham, Ala Also receives 6,000 pounds a month from Huntsville, Ala	Red Ball, ICX, Transcom, Merchants, Roadway, United, Mercury, and ETMY	Wants consistent single-line service in order to keep inventory down Average transit time seven days, including weekends	Red Ball
From Atlanta, Ga to Dallas Shipper receives about four million pounds a year Shipper may require split deliveries [illegible] Texas and Louisiana towns	Transcon and ETMY	Wants assurance of additional carriers to supply sufficient equipment No transit or load times given	Red Ball
From Graham to Marietta, Ga (ships two times a month) Cape Kennedy (two times a month) and Orlando, Fla (two times a month) Each shipment weighs about 100 pounds	Red Ball	Wants faster and more consistent deliveries No times given	Red Ball Red Ball is only applying for authority to Atlanta Ga., and will be unable to serve Marietta directly
From Wichita Falls to Greenville, Miss Ships 100,000 pounds a year (five TL a year) Also receives occasional shipments from Birmingham, Ala.	Red Ball, Viking, Campbell, and Jones	Wants single-line service because shipper has lost items on interchange	Red Ball There is nothing in the record to show that existing service is unsatisfactory.

Summary of evidence of supporting shippers—Cont'd.

"TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
126. (378) George E. Anderson, Company, Dallas, Tex. Electrical supplies	Dallas to Jackson, Miss. Shipper has about twenty shipments a month, with weights ranging from thirty to 5,000 pounds	Red Ba... and Jones	Has had poor pickup service. Wants overnight single-line service	Strickland. Shipper does not route a... of points
125. (380) Home Interiors & Gifts, Inc., Dallas, Tex. Merchandise	From Dallas to points in Georgia. Shipper ships about 30 shipments a month. Average weight is 100 pounds	Roadway	Wants better service. Lost business due to damaged ship-ments. No transit or lead times given.	Strickland. Strickland could only serve Atlanta, Ga. Shipments would be interchanged at Atlanta.
126. (381) Xerox Corp., Arlington, Tex. Office machines	From Arlington to Greenville, Miss. Ships two to three shipments a week. Average weight is 75 pounds. From Atlanta, Ga. to Arlington. Shipper receives 6 to 10 shipments a month. Average weight 700 to 900 pounds.	Red Ba..., ETMT, and Jordanes	Wants single-line service and an expedited service. No transit or lead times given.	Red Ball.
127. (382) Magnolia Brush Mfrs., Inc., Clarksville, Tex. Brushes	From Clarksville to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Outbound shipments average 5,000 pounds a month. Between 5 and 10 shipments a week move to Atlanta. To Birmingham five shipments serve a month, and there are occasional shipments made to Greenville.	Red Ba...	Wants consistent single-line service. Has difficulty in tracing with joint-line service. Wants faster transit time. Transit and load times are not given.	Red Ball
128. (383) U.S. Brass Corp., Plano, Tex. Brass and steel fittings	From Plano to points in Mississippi, Alabama, and Georgia. Shipper has from 1 to 15 shipments a day to points in the above States. Each shipment weights from 30 to 1,500 pounds.	Strickland, Red Ball, Campbe..., Ryder, Bowman, Central, Mercury, Transcon, and Jordanes.	Wants quicker service. Red Ball no longer picks up. No transit or load times given.	Strickland
129. (384) Anchor Serum Company, Dallas, Tex. Veterinary supplies	From Dallas to points in Mississippi. Ships one LTL shipment a week to points in Mississippi. Each shipment weighs between 50 and 200 pounds.	Red Ball.	Wants faster reliable service because some supplies are perishable. Received customer complaints about excessive transit time. Wants proposed overnight service to Jackson. No transit or load times given.	Harris. No evidence of unsatisfactory existing service was presented.
130. (385) G. C. Gribble Co. Houston, Tex., Steel fabricators	Inbound to Houston from Jackson, Miss. In September 1964 shipped 90,000 pounds from Jackson to Houston. In August 1964 30,000 pounds was shipped to Houston from Jackson.	Red Ball, West Bros., and Harris.	Wants overnight service from Jackson.	Harris. Red Ball offers direct service to Houston and there is no evidence that their service is inadequate to meet shipper's demands.
131. (386) Texas Wholesale Variety, Inc., Dallas, Tex. General merchandise	From points in North Carolina and Atlanta, Ga. to Dallas. Shipments are received weekly. Each shipment weighs about 750 pounds.	ETMT, Transcon, and Strickland.	Wants fast transit time from Carolinas. Wants second morning service from Atlanta to Dallas.	Harris. Shipper states he is dissatisfied with existing service, but presented no evidence of poor service.
132. (396) Potts Longhorn Company, Dallas, Tex. Leather	From Chattanooga and Buford, Tenn., to Dallas. Received 9 shipments from 1/14/64 to 7/10/64 with an average weight of about 2,500 pounds.	Bowman and ETMT.	Wants Bowman to have single-line service from faster transit times. Average transit time is four days, including weekends. Needs two-day service from Chattanooga and Buford.	Bowman.
133. (395) Carter & Company, Dallas, Tex. Hardware	From Dallas to points in Mississippi. Plans to ship 7,000 pounds a month to Greenville, Miss.	Red Ball, ETMT, Roadway, Ryder, Cole, and Jones.	Wants consistent transit time and single-line service.	Red Ball. Jones offers single-line service from Dallas to Greenville. Several carriers offer single-line service to involved points.
134. (396) Pinnell Baled Wire Products Company, Inc., Dallas, Tex. Display racks	From Dallas to points in South Carolina, Florida, Georgia, Alabama, North Carolina, Virginia, New York, Pennsylvania, Maryland, Arkansas, Tennessee, and Massachusetts. From May 1964 through September 1964 shipper had in excess of 50 shipments with an average weight of 700 pounds.	Harris, Roadway, Red Ball, and Strickland.	Wants faster transit time allowing 7 to 10 days lead time in Florida and New York, 5 days to points in Alabama, Georgia, Virginia and the Carolinas. Wants 3-day service to Alabama and Georgia, 3-day service to Florida, and the Carolinas, and 5-day service to New York.	Johnson, Bowman, and Jone. There are several interline combinations available which shipper has not used.

Summary of evidence of supporting shippers—Continued

Class I service

[illegible]	[illegible] and regularity of traffic	Existing service or circuitry	Reasons for supporting application	Application supported and remarks
[illegible]	[illegible] the eastern seaboard. From 8/1/65 through 8/31/65 shipper transported [illegible] shipments [illegible] average weight was 5[illegible] pounds. From [illegible] Florida. From [illegible] 8/1/65 to 8/31/65 shipper had 9 [illegible] average weight [illegible] pounds.	REA, M-S, Herrin, Roadway, Consolidated, Gordons, Herrin, and ETMT. Roadway, Herrin, and Herrin.	Wants faster more reliable service. Allows a load time of one week on shipments for Florida. Needs 1 to 4-day service to points in Florida. Shipper wants city [illegible] service. Needs 2- [illegible] 1-day service to point in Florida. Presently [illegible] and [illegible] 4 to 6 days. Shipper wants 1-day service. Average transit time 1 2 days needs 1-day service from Pine to Dallas.	Bowman, Johnson, and Jones. Shipper does not route all shipments. Bowman. No proof that existing service is inadequate. Johnson. Shipper wants to use motor carrier in place of TOFC service.
[illegible] Pine [illegible] Dallas. Tex. Piece goods	From points in Georgia, Texas [illegible], Alabama, Florida, Mississippi, Tennessee, Kentucky, Louisiana, Arkansas, Missouri, Oklahoma, Kansas, Colorado, Nebraska, Iowa, Minnesota, Wisconsin, Illinois, Indiana, Ohio, Michigan, Pennsylvania, New York, New Jersey, Maryland, Delaware, Virginia, West Virginia, North Carolina, South Carolina, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, and the District of Columbia. Shipper has 35 shipments per month weighing 5[illegible] pounds. From points in the eastern seaboard to Dallas, Tex. from 12/28/65 to 7/22/66 shipper received in excess of 35 shipments average weight was 500 pounds.	Roadway, Gordons, Red Ball, [illegible], Brownsville, Herrin, H. M. [illegible], Beasley, Strickland, Transcon, Akers, Rockaway, and Catawba.	Wants better service with a minimum amount of delays. Average transit time 3 to 4 days, including weekends. Wants 2- to 3-day service from Georgia, North and South Carolina and Alabama. Allows one week lead time to points in the destination territory, except New Jersey and New York.	Bowman, Johnson, and Jones.
[illegible] Designs, Inc. Dallas, Tex. Wearing apparel	From points in Massachusetts, New Jersey, Pennsylvania, North Carolina, South [illegible], New York, Arkansas, and Kentucky. Received [illegible] shipments weighing 5[illegible] pounds. Shipper commences to have shipments outbound to points in the eastern seaboard.	Akers, Strickland, Trans Am, Pacific, Gordons, and Roadway, and Top Shippers Assoc.	Wants faster transit time so as to [illegible] 4 days from eastern seaboard points, and 5 to 7 days from Charlotte and the Carolinas. Needs 2- to 3-day service from Carolinas, 1-day service from New York, and 4-day service from New England points.	Johnson and Bowman. Shipper does not route all traffic. Shipper knows that some carriers can provide single-line service from many points.
[illegible] Jeff Bros Dry Goods Co., Houston, Tex. Dry goods and notions	From points on the eastern seaboard to Houston. From December 1965 to April 1966 shipper received about 200 shipments with an average weight of about 400 pounds.	Roadway, Standard, Georgia Highway, Atlanta, Ryder, Akers, J. B. W., Bellmont, Pike, Coastal Harper, Thurston, Strickland, Overnite, T. I. M. E., TCT, ETMT, and others.	Existing service is poor. Average transit time is 5 to 7 days. Needs 3-day service from Georgia and Alabama points, 3-day service from Carolinas and 4-day service from New York.	Johnson and Bowman. Shipper does not route all traffic. Shipper knows that some carriers can provide single-line service from many points.
[illegible] (a) Southwest Tower, 4 [illegible] Dallas, Tex. Towels and liner (b) Associated Motor Products, Dallas, Tex. Electric golf carts. [illegible] (a) Tongilmol of Texas, Dallas, Tex. Liquid lacquers, adhesive and dry paints [illegible] (407) Tempo Decorative Fabrics, Dallas, Tex. Piece goods	From Farmington receives 1,000 pounds a month and Charlotte, N.C. (500 pounds a month) to Dallas.	ETMT, Gordons, Roadway, Central, Ryder, New Dixie, Frederickson, and Overnite.	Wants faster service so it does not have to maintain a large inventory. Average transit time is 6 days, including weekends. Wants proposed 2-day service from Carolinas to Dallas.	Johnson and Bowman. Bowman and Johnson presently interlining with ETMT provides good service.
[illegible] From Hicksville (receives 20,000 pounds a month) and White Plains, N.Y. (receives 40,000 pounds a month) to Dallas.	From points on the eastern seaboard to Dallas. From August to September, 1965 shipper received about 75 shipments with an average weight of 300 pounds. Shipper states that he receives normally about 60-70 shipments a month.	ST, [illegible], Cotton, Acme, Tex-Pac, and TCI. Starnes, Strickland, Roadway, Argay, G & P, ETMT, McLean, Spector, Midwest, Overnite, Acme, Empire, [illegible], Trans Am, T. I. M. E. Ryder, Central, TCE, Mercury, Consolidated, Gordons, and Lee Way.	Wants faster transit times. Needs 4-day service from New York. Wants faster transit times to take advantage of 10-day payment discounts. Prefers single-line service. Average transit time 5 to 8 days, including weekends. Needs 2-day service from Atlanta and the Carolinas, and 3- to 4-day service from eastern points. Average transit time by Roadway was 5[illegible] days, including weekends.	Bowman and Johnson. Johnson, Bowman, and Jones. Shipper has the right to specify carriers but generally lets its suppliers pick a carrier. Shipper is unaware that Ryder can serve Houston.

114 M.C.C.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	[illegible] supported [illegible]
144. (408) August Camera Company, Dallas, Tex. Cameras	From Dallas to Mobile and Birmingham, Ala., Jackson, Miss., and Atlanta, Ga. Shipments are made weekly to these points weighing between 100 and 3,000 pounds with an average weight of 200 pounds.	Red Ball, Merrin, Overnite, and Transcon.	Wants faster single-line service. Wants 2-day service from Dallas to Atlanta.	Merrin. No evidence in record to show that existing service is inadequate.
145. (412) Riviana Foods, Inc., Houston, Tex. Calle fila and paper bags.	From points in Georgia and Alabama, to its facilities at Houston and Bayou and Abbeville, La. Shipments from Atlanta weigh from 700 to 7,500 pounds. Average LTL shipment weighs 2,500 pounds.	Bowman, Merrin, and West.	Wants faster single-line service allowing 3 to 4 days lead time from Atlanta to Houston and 5 to 7 days from Atlanta and Mobile to its Louisiana plants.	Merrin. No evidence in record to show existing service is poor.
146. (413) Saladmaster Corporation and Colony House, Inc. Dallas, Tex. Cookware	From Dallas to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Ohio, Massachusetts, New Hampshire, New Jersey, New York, North and South Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia. During August 1966 shipper had in excess of 100 shipments to points in the above-described States. Average weight was 300 pounds.	Mercury, Red Ball, Transcon, ETNF, Merrin, Roadway, Spring, Conn., Lee Way, and West.	Too many delays. Service too slow, allowing a lead time of one week to Middle Atlantic States and 3 to 4 weeks to New England States. Wants single-line service.	Johnson, Bowman, and Jones. Existing service appears to be adequate.
147. (416) Premoli Hosiery Co., Dallas, Tex. Hosiery	From Hickory, Charlotte, and Burlington, N.C., to points in Louisiana and Texas. Shipper maintains a warehouse at Dallas. Receives weekly shipments ranging between 50 and 400 pounds.	Roadway, Transcon, and ETNF.	Wants 4- or 5-day service. Present service takes between 4 and 10 days.	Merrin.
148. (417) Panhandle Association Grocers, Inc., Amarillo, Tex. Grocery items, toilet preparations, and rugs	From Atlanta, Ga., and points in North Carolina, South Carolina, and Florida, to Amarillo, (weekly and bi-weekly shipments).	Roadway and Transcon, in single-line service. Merchants, Texas Chickens, and ICX.	Wants faster service. Present average transit time 8 days including weekends.	Red Ball. Transit time does not include all shipments during period. Specific volume not given.
149. (418) Sheinberg Manufacturing Co., Dallas, Tex. Women's clothing and cotton and synthetic cloth and piece goods.	From North Carolina and South Carolina, to Dallas. From Dallas to Jackson, Miss., Birmingham, Montgomery, and Mobile, Ala., Atlanta, and Columbus, Ga. Inbound - weekly shipments range between 100 and 5,000 pounds. Outbound - daily shipments range between 50 and 1,000 pounds.	Red Ball, East Texas, Roadway, and Gordons.	Wants faster service. Must now allow at least 10 days lead time. Having problems with pickups.	Merrin.
150. (420) McKell's Sportswear Company, Dallas, Tex. Piece goods	From Atlanta, Ga., to Dallas. From Dallas to Jackson, Miss., and Birmingham, Montgomery, and Mobile, Ala. Inbound - weekly shipments volume not given. Outbound - daily shipments range between 100 and 500 pounds.	Gordons, Roadway, and Red Ball.	Wants second-morning service. Must now give 5 to 10 days lead time.	Merrin.
151. (421) Overseas Motor Corp., Fort Worth, Tex. Auto parts	From Fort Worth to points in Florida, Georgia, Alabama, Virginia, New Jersey, New York, North Carolina, South Carolina and the District of Columbia. Sixty-eight shipments moved during June, July, and August 1966 ranging between 12 pounds and 1,971 pounds.	Roadway, Mercury, Strickland, East Texas, Consolidated, and Merrin.	Wants 2-day service to Alabama and Georgia; 3 or 4-day service to Florida; 3-day service to the Carolinas, and 4 day service to other points. Present transit time ranges between 4 and 8 days.	Bowman, Johnson, and Jones.
152. (422) Rex River Carpets, Inc., Dallas, Tex. Carpets	From White, Ga., to Dallas. Two TL shipments weekly ranging between 30,000 and 40,000 pounds.	NCA, Gordons, and East Texas.	Wants 2-day service. Must now allow 2 weeks lead time for delivery.	Johnson and Bowman.

HERRIN TRANSP. CO. EXTENSION—ATLANTA, GA

summary of evidence of supporting shippers—Continued

TRAI—Continued

Shipper location and commodities	Origins, destinations or area, type and frequency of traffic	Existing service utilized	Reason for supporting application	Applicant's support and rebuttal
(x2) ... Fort ... (x3)	From Fort ... points in ... Carolina, ... Georgia, ... South Carolina, and ... Fort ... shipments were made during the month of ... 1966 ranging between ... pounds and ... pounds	Roadway, Transcon, Georgia Highway, Ark Ho..., Point Coastline, Reliable, Mer..., Baggett, Bar..., Con Ellis and Tate ...	Wants 2-day service to Georgia, Alabama and North Florida. 1-day service to the ... carolinas, and 4-day service to South Florida. Prosser service to Alabama, Georgia and North Florida take 3½ hours. Problems with delays, damages and generally poor service	Herrin and Johnson
... (x2) ... Fort ... (x3)	From points in South Carolina, Delaware, Virginia, Tennessee, Pennsylvania, Massachusetts and Georgia, to Fort ... From Fort ... to points in Florida inbound between 5/13/66 and 6/... 66 shipments ranged between 205 pounds and ... pounds. Three outbound shipments weekly averaging between 200 and 250 pounds	Roadway, East Texas, Standard, ET & WNC, Honeybaker, Tennessee, and Fortune	Wants 2- or 3-day service from South Carolina and Virginia, and 2-day service from Georgia. Average transit time now is 4 days.	Herrin and Johnson. Transit time appears to represent all shipments made during period
... (x2) ... (x3) ... Dallas, Tex. ...	From Philadelphia, Pa., to points in Louisiana and Texas, including shipper's warehouse at Dallas. Weekly shipments range between 750 and 5,250 pounds	Strickland, ... and Roadway	Wants between 3- and 5-day service to Dallas. Shipper states Strickland holds traffic at origin for 4 or 5 days before attempting delivery	Herrin and Johnson
... (x2) America Thread Company, Dallas, Tex. Threads, tapes, and zippers	From Marion, N.C. to Dallas. Truck and ... shipments range between 13 pounds and 52,502 pounds monthly	Triodman, Ryder, East Texas, Overnite, Gordons, Red Ta..., Spartan, Acme, Air Lines, Hall and Buzan	Wants 1-day single-line service	Herrin, Johnson, and Jones.
(x29) Modern Carpet Industries, Dallas, Tex Carpets	From Dalton, Ga., to Dallas. Two ... shipments move monthly	Georgia Highway, Piggyback, Southern, and Mercury	Wants 3-day single-line service. Must now allow 8 to 10 days load time. Average transit time now is 8 days, including weekends	Herrin. Transit time does not include all shipments during period covered
(x3) Humco Laboratories, Texarkana, Tex Chemicals and drugs	From Texarkana to Atlanta, Ga., and Birmingham, Ala. About 2,990 pounds move monthly to Atlanta and about 9,90... pounds move monthly to Birmingham	East Texas	Prefers single-line service and desires the availability of more than one single-line carrier	Red Ball. East Texas presently serves shipper daily in single-line service
(x32) Smith-Blair, Inc., Texarkana Tex Fabricated pipe, fittings, and related steel articles	From Texarkana to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss., and points in Florida. Monthly shipments range between 32 and 6,840 pounds.	East Texas A.B.F. and Red Ball	Wants an additional single-line carrier	Red Ball. East Texas presently serving shipper in single-line service.
(x33) Southwestern Drug Corp., Dallas, Tex. Pharmaceutical products.	From points in Massachusetts, New Jersey, Connecticut, New York, Georgia, Maryland, Virginia, and North Carolina, to shipper's distribution centers located at points in Texas. Monthly shipments range between 66 and 9,978 pounds.	Strickland, Midland, Rapid Trans. Assn., Star, National, East Texas, Texas Freight, Transcon, Nevada, Bowman, Watson-Wilson, and Southern	Wants faster service. Average transit time is now 5 days, including weekends.	Herrin, Johnson, and Jones
(x34) Southwest Pump Co., Bonham, Tex. Gasoline pumps and related parts	From Bonham to Atlanta, Ga. About 90,220 pounds moved between 1/1/66 and 6/31/66.	Red Ball, Conrad, and Roadway	Wants 3-day service. Shipper states that average transit time is now between 4 and 5 days, including weekends.	Red Ball. Roadway presently serving shipper in single-line service to Atlanta. No specific complaints
(x35) Dettelbach Pesticide Corp., Dallas, Tex. Insecticide raw materials.	Between Dallas and Greenville, Miss., and between Dallas and Atlanta, Ga. Shipper moves 4,000 pounds a month from Dallas and approximately 49,000 pounds is received at Dallas from Atlanta.	Red Ball, F & W, ET & WNC, East Texas, and Roadway.	Wants second carrier service. Present service too inconsistent	Red Ball. Roadway renders 2.5-day service excluding weekends.

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported by remarks
183. (436) Covenant Carpets Inc., Dallas, Tex. Carpets	From Dalton, Ga., to Dallas, Fort Worth, and Houston, Tex. About 400,000 pounds of TL and LTL shipments move each month	Roadway, Piggyback, Georgia Highway, Bowman, East Texas Transfer, Gordons, and Frost	Prefers single line 1 day service that presently allows between 5 and 7 days total time. Average transit time is 6 days, including weekends	Bowman Transfer, and Frost Transit line do not appear to include all shipments moving under proposed Red Ball Shipper has available single line service 7 days per week. Transfer and Gordons between Atlanta and Dallas and Frost Transit between Dallas and Houston, Tex., are motor common carriers, and Mercury is a freight forwarder
184. (437) Marlite Division of Masonite, Grand Prairie, Tex. Wallboard	From Atlanta, Ga., to Grand Prairie and return, and From Grand Prairie to Birmingham, Ala., and Greenville, Miss. Shipments range between 100 and 3,000 pounds three to four times a month	East Texas, Mercury and Red Ball	Wants faster and more consistent service	Mercury
185. (438) Royal Crown Bottling Co., Houston, Tex. Flavoring compounds	From Columbus, Ga., to Houston Weekly TL and LTL shipments range between 700 and 8,500 pounds	Tile, Harvin, Pyles, and Missouri Pacific	Wants reconsistent service that now allows 7 days total time	Harvin
186. (439) Dallas Brush Manufacturing Co., Dallas, Tex. Plywood, steel, and bass fiber	From points in South Carolina, Vermont, New Jersey, and Pennsylvania to Dallas About 50,000 pounds move monthly	Central, Lansdale, Welch, North Penn, Lee Lamb, Overnite, Transamerican, Roadway, Republic, Mid Continent, Brown, Strickland, and Transcon	Needs faster service Wants 3 to 4-day service Average transit time is now 7 days including weekends	Bowman and Johnson
187. (440) Dallas Handbag Co., Dallas, Tex. Ladies handbags, gloves, and belts	From Dallas to Mobile, Ala., Jackson, Miss., and Atlanta, Ga. Weekly shipments average about 150 pounds	Red Ball, Branson, East Texas, and Jordons	Wants faster service that now allows between 4 and 7 days. Shipper has experienced delays in pickups	Harvin
188. (441)	Dallas and Houston, Tex.	See shippers under Georgia heading		
189. (442) Sears, Roebuck and Company, Dallas, Tex. General merchandise	Inbound from about 2,000 suppliers in Tennessee, South Carolina, North Carolina, Georgia, Alabama, Florida, and Mississippi Shipments move to shipper's warehouses located at Dallas, Houston, and San Antonio, Tex., Oklahoma City and Tulsa, Okla., Shreveport, La., and Albuquerque, N. Mex. Also the shipments move to its stores located in western sometimes portions of Arkansas and Missouri Texas Kansas Oklahoma, and New Mexico Between July 1, 1961 and March 1962 shippers had 2,420 shipments from the origin territory to the destination territory	Harper, TJVM, Pyler FTM, Georgia Highway, Carolina, Jordons, TIME, Transcon, and Road way, among others originate the traffic Central, ITME Jordons, TIME, Red Ball, Mercury, Roadway, Trans-con Brown, Harris Brandwell among others deliver shipper's traffic	Shipper indicates that some of the service it receives to the Southeast is good However, it is not consistently good and shippers want to obtain a larger inventory than it does now Shipper wants at least 4-day service to 24 states which it now serves Its shipments and overnight service to Louisiana or about 6 percent of its shipments it generally it requires 2-day service to Southeastern points The average transit time of the 2,420 shipments listed, including weekends was 4 3 days	Brandwell, Red Ball and Harris
190. (443) Wagner Foods, Inc., Dennison, Tex. Refrigerated products used and dressed Inbound service plans goods	Inbound to Dennison from Biltmore and Greensboro, N and points in South Carolina, Mississippi, Georgia, and Virginia About 170 inbound shipments are received each month with an average weight of 1,000 pounds a shipment Outbound from Dennison shipments move to Atlanta, Ga., Birmingham, and Montgomery, Ala., Jacksonville, Fla., Jackson, Miss., Monroe, La Charlotte, N.C., Roanoke and Richmond Va., and Washington, D.C Between 500 and 600 shipments a month weighing between 40 and 750 pounds a shipment move to these points	Roadway renders single-line service from North and South Carolina The service from of TTVANC interlining with Western Gillette, Ryder with Central, Columbian with Gordons, and Overnite, and ANL over Central, Gordons, and Red Ball originate most of shipper's traffic From Dennison	Shipper receives complaints almost every day regarding the following items on shipments to the Southeast It wants one-day service between points in the origin and destination territory A transit time study of 24 shipments delivered between March 1961 and May 1961 shows that on inbound shipments to Dennison shipper is receiving between 4 and 13 day service including weekends and in all but one instance where the transit time involved 10 or more days including two weekends The listed shipments moved from North and South Carolina, Virginia and Georgia The one shipment delivered in 4 days did not include a weekend Excluding weekends the average transit time on these shipments is 5.7 days	Stricklands Shipper was not aware that Roadway served all the points but one in Virginia Bowman and Swift Carolina and Georgia listed on its transit time study This carrier's service is considered as satisfactory

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (1456) Tennessee Products, Dallas, Tex. Compressors and air conditioners	Outbound from Dallas shipments move to Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. Shipper has about 30 outbound movements a month which weigh an average of between 1,000 and 2,000 pounds a shipment to these points. Shipper has about the same volume of inbound movements. Between 1/20/64 and 9/30/64 shipper had 5 movements to Jackson, 19 to Birmingham, 5 to Huntsville, [illegible] to Mobile, and 1 to Helena, Ala. All of the shipments were LTL.	Strickland, Herrin, Red Ball, Mercury, East Texas, and Transcon.	Shipper wants overnight service between Jackson and Dallas and second-day service between Birmingham and Dallas. It introduced a transit time study of 33 shipments - 13 of which moved from Jackson to Dallas and the remainder of which moved from Birmingham to Dallas. All of the shipments were handled in the first 9 months of 1964. Seven of the shipments from Jackson were delivered in 2 days (one including a weekend). Transit times were not given for 7 of the Jackson shipments and the remaining 4 shipments were delivered in 4 days, including weekends in all instances. From Birmingham shipper is receiving between 2 and 5-day service. In all but one instance where delivery required more than 2 days a week was involved.	Strickland. Shipper believes that only Mercury provides single-line service from Dallas to Birmingham or Mobile. Red Ball renders second-day service excluding weekends and holidays.
[illegible] (1457) Center of Dallas, Dallas, Tex. Test in products	Inbound to Dallas shipper receives most of its traffic from North and South Carolina with some from Alabama, Mississippi, and Arkansas. Shipper receives about 30,000 pounds monthly.	Air Freight, REA, Bowman, Mercury, Roadway, Thurston, ETMF, Piedmont, Huckabee, North Alabama, Gordons, F & B, Red Ball, and Strickland.	Shipper wants overnight service between Jackson and Dallas, and second-morning service between Atlanta and Dallas. It introduced a transit time study of 29 shipments delivered between 1/22/65 and 1/26/64 to Dallas. Of the 29 shipments, 22 moved from points in North Carolina, 3 moved from points in South Carolina, 1 moved from Alabama, 1 from Mississippi, and 1 from Arkansas. Including weekends, the average number of days in transit was 7.1.	Strickland.
[illegible] (1455) Alton Manufacturing Company, Dallas, Tex. Air conditioners and air [illegible]	From Dallas to points in Florida, Georgia, and North and South Carolina. Between January and August 1964 shipper had 104 shipments to specified points in Georgia, Florida, Alabama, and North and South Carolina. All of the shipments weighed under 10,000 pounds with some weighing only 30 pounds.	Transcon, Roadway, ETMF, Gordons, Mercury and Herrin. On shipments to Florida Herrin interlines with [illegible] and Ryder.	Shipper is not satisfied with the existing service especially to points in Florida. It cited one example of poor service on the part of Herrin.	Bowman, Johnson, and Jones. Shipper is reasonably satisfied with present single-line service by Herrin to Jackson.
[illegible] (1461) American Permanent Wave Company, and Tray Service Co., Dallas, Tex. Cooking pens and serving trays.	From Dallas between 8/1/65 and 10/3/64, shipper had a total of 18 movements, weighing a total of 5,756 pounds with an average weight of 360 pounds to Miami, Tampa, Jacksonville, and Hialeah, Fla. Occasionally, shipments are made to other points in Florida.	Herrin is used to Jacksonville, Red Ball, Transcon, Bresswell, and Gordons with connecting carriers are also used.	Shipper maintains a warehouse at Miami, but it is unable to maintain a complete inventory. It is not satisfied with the transit time to Florida.	Bowman.
[illegible] (1462) Texarkana Concrete Products Company, Inc., Texarkana, Tex. Bolts, nuts, asphalt, glass, plywood, machine parts and sales items	Inbound to Texarkana between January and April 1964, shipper received 2 shipments from Kansas City, Kans., 1 from Birmingham, Ala., 1 from both McComb and Jackson, and 2 from Pascagoula, Miss.; 1 from Memphis, and 2 from Sweetwater, Tenn., and 10 from Baltimore, Md. All of the shipments were LTL with an average weight of 1,200 pounds.	ABF, ETMF, Red Ball, Arizona Motor Freight, West, Roadway, ET & WNC, Davidson, Strickland, and Jones.	Shipper wants 3-day service from Baltimore and Philadelphia; and second-morning service from Kansas City and Birmingham. It would like another carrier with terminal facilities in Texarkana. Shipper's transit time study covered shipments delivered between January and April 1964. Ten shipments from Baltimore were listed. Seven of these moved through Dallas with transit times to this point, including weekends, of between 4 and 6 days. Two shipments from Sweetwater were delivered in 12 and 7 days, including weekends; one from Memphis was delivered in 3 days, including a weekend; and 1 from Birmingham was delivered in 3 days, including a weekend.	Bowman and Jones.
[illegible] (1463) H.D. Ardlinger & Son Company, Dallas, Tex. Glassware and woodenware	From Dallas to points in Florida (7,000 pounds a month), Alabama and Tennessee (32,000 pounds a month) and Georgia, North Carolina and South Carolina (22,000 pounds a month). Average shipment weighs 200 pounds.	Johnson, Ryder, T.I.M.E. Transcon, SMT, Gordons, ETMF, Red Ball, Mercury, Roadway, and Bowman.	Wants single-line service to most points to avoid delays.	Johnson, Bowman, and Jones. Roadway offers single-line service to points in Carolinas and Georgia. Shipper seems satisfied with Roadway but wants added competition.

Summary of evidence of supporting shipper—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
177. (464) Salem Rubbins Paper Co., Dallas, Tex. Paper products.	From shipper's Dallas warehouse to Atlanta, Ga. and from Atlanta to Dallas (5 to 20,000 pounds, no time period specified). From shipper's Atlanta facilities to southern Arkansas and from Dallas to southern Arkansas (from 1,000 to 20,000 pounds a month), and Louisiana (20,000 pounds a month) and 15,000 pounds a month from Dallas to El Dorado.	STMF, Strickland, Red Ball, and Braswell.	Wants overnight service from Atlanta to Little Rock and second-morning service to other Arkansas points. Wants overnight service from Dallas to points on Arkansas Highway 82. It allows 10 days lead time from Atlanta to Camden, Ark., and wants 2-day service. Wants overnight service from Atlanta to Shreveport.	Bowman, Johnson and Jones. Red Ball can serve many points directly.
178. (465) Hutt Sales, Inc., Arlington, Tex. Aircraft hardware.	From Arlington to points in Georgia, Florida, New York, and New Jersey. From 1/14/66 to 10/4/66 shipper had in excess of 100 shipments to points in the above States. Each shipment weighed from a minimum to 500 pounds.	Strickland, Transcon, T & P, and Roadway.	Wants better transit time with less damage. Wants 4- or 5-day service.	Jones, Johnson and Bowman. Never used Herrin to Florida points. No evidence to show that existing service is inadequate.
179. (471) Plastimol Industries, Dallas, Tex. Plastic ships, seamless flooring material and cultured marble.	Expects to ship to east coast through Atlanta and Birmingham. Expects 15,000 pounds to move a month from above points. Presently shipping 1,500 pounds a week from Dallas to Texarkana, Ark.	Never shipped to area.	Wants proposed service to help develop business.	Bowman, Johnson, and Jones. Traffic shipped in drums requires insulated equipment.
180. (472) Curtis-Mathes Company, Dallas, Tex. Home electronic items.	From Dallas to points in Virginia, North and South Carolina, Florida, and Arkansas. No volume figures given except when shipments weigh less than 2,000 pounds.	STMF, Red Ball, Transcon, Jones, Southwestern, Central, and Tamiami.	Problems with transit time and rate restrictions.	Bowman, Johnson, and Jones. No evidence presented to show need for additional service or unsatisfactory existing service.
181. (474) Triangle Aluminum Company, Dallas, Tex. Aluminum structural products.	From Dallas to Atlanta, Ga., and Jackson, Miss. Ships to the above points once a week. Each shipment averages 500 pounds.	Red Ball, Braswell, and Gordons.	Has tracing and loss problems. Wants overnight service to Jackson and second-morning service to Atlanta.	Herrin. It appears that no evidence was submitted to show actual loss or poor transit time.
182. (475) Texas Parts & Service Co., Dallas, Tex. Air-conditioners, furnaces and parts.	From Dallas to points in Mississippi. Daily shipments are made to points in Mississippi. They range from 100 to 500 pounds with an average of 250 pounds.	Red Ball and Braswell.	Wants consistent transit time to Jackson, Miss.	Herrin. Customer in Jackson designates carrier. No complaints about Braswell's service.
183. (477) Philadelphia Carpet Co., Dallas, Tex. Carpets.	From Cartersville, Ga., to Dallas. Approximately 50,000 pounds moves each month.	MCA or Georgia Highway to Atlanta, Ga., and interchange with either Roadway or Ryder to Dallas.	Problems in tracing under joint-line arrangement and need for expedited delivery in 2-day service.	Bowman. Shipper indicates that it has been receiving shipments on a regular basis.
184. (478) Flag Textile Mills Co., Dallas, Tex. Cotton and synthetic fibers.	From points in the Southeast to Dallas. Between 100 and 1,000 pounds moves three times a week.	Roadway, East Texas, Transcon, and Mercury.	Existing carriers have not been able to provide overnight service from Atlanta, Ga., to Dallas as promised.	Herrin. Shipper expressed a need for service from Atlanta only. Applicant does not offer overnight service.
185. (479) Steelcase Co., Dallas, Tex. Office furniture.	From Dallas to points in the Southwest and Mississippi. Approximately 500 pounds moves twice a week.	Red Ball and Braswell.	Dissatisfied with delivery time. Needs overnight service to Jackson, Miss.	Herrin. Red Ball offers second-day service to Jackson, and has never had a complaint from customers.
186. (480) H. E. Porter Co., Dallas, Tex. Industrial hoses, V-belts, radiator hoses, and conveyor belts.	From shipper's Atlanta, Ga., facility to points in Texas and Louisiana (approximately 10,000 pounds a month); from its Dallas, Tex. facility to Atlanta (approximately 2,000 pounds a month); and from Dallas to Birmingham, Ala., (between 1,000 and 20,000 pounds of "conveyor belts" a month).	Transcon and East Texas.	Better service offered by applicant, and steady increase in business. Industrial hoses are highly susceptible to damage in transit, and are shipped crated or in bales. Shipper contends that other single-line motor carrier services between Dallas and Atlanta are not consistent.	Red Ball.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origin, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] Co., Inc., Mineola, Tex. Tents, awnings, canvas products and [illegible]	From Atlanta, Georgia, and Hiss[illegible]ppi to Texarkana, Tex. Shipments range from 25 to [illegible],750 pounds a shipment weekly.	Acme Fast Freight, Bowman, ABF, Gem Freightways, LTWF, Gordons, Mercury, Northern, Red Ball, Roadway, Ryder, Southeastern, Strickland, Turner, and Wilson.	Joint-line service inadequate. Needs faster service. Average transit time is now 6 days, including weekends.	Bowman and Jones shipper is not satisfied with the services of carriers operating over the Memphis gateway to Texarkana, but does not give any specific complaints concerning transit time. Study does not include any shipments during the study period. Bowman, Johnson and Jones: Shipper is aware that Mercury can serve certain Florida points in single-line service. Shipper states that if any other carrier can give single-line service to any of the destination States involved, they have not solicited this traffic. Red Ball: Traffic is seasonal. Roadway has single-line service to some of the points in the southeast, but shipper has never used its services. Shipper has used Jones' single-line service to Greenville, S.C., but had problem tracing. Hydraulic lift-gate equipment is required. Red Ball: Shipper is aware of the single-line service of Gordons and East Texas between Atlanta and Dallas, but believes that their service through Memphis increases the chances of not getting consistent service. Shipper has tried the single-line service of Tennessee but states that it was not satisfactory. Red Ball: Shipper presently satisfied with service of Red Ball, except that interchange on shipments to Atlanta (one of its best sales area) causes a delay in delivery. Commodities do not require refrigeration, but insulated equipment is helpful. Red Ball: A substantial volume of shipper's traffic presently moves in private carriage.
[illegible] (1687) Hard[illegible] (from Commerce, Sherman, Tex.) Cotton gin machinery and related parts.	From Sherman to points in Alabama, Georgia, Louisiana, Mississippi, North and South Carolina, and Tennessee. Approximately 2 million pounds moves monthly. Shipper receives from Birmingham, Ala., at Sherman, approximately 500 pounds a week.	Red Ball, Central Freight Lines, Gordons, J.H. Rose, C&H Transp., Jeffries Evans, Air Freight, Lone Highway, and Overnite.	Single-line service would be more convenient. Wants second-morning service to Greenville, Miss., and third-morning service to Atlanta and Birmingham.	
[illegible] (1685) Oil London Fields, Dallas, Tex. [illegible]ingham	From Atlanta, Ga., to Dallas. Approximately 5,000 pounds moves monthly.	Roadway and United-Mercury.	To obtain second morning delivery, and to reduce present lead-time requirement (presently allowing between 3 and 4 days lead time).	
[illegible] (1681) Heritage Soap & Candlemakers, Harris, Tex. Gift items, soap, pottery and candles.	From Harris to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. (Approximately between 2,000 and 5,000 pounds moves a month).	Red Ball.	All shipments beyond Jackson, Miss., require interchange causing delay in delivery. Wants third-morning service to all points.	
[illegible] (1687) Harris Electric Manufacturing Company, Itasca, Tex. Fluorescent light fixtures and plastic lenses and louvers.	From Itasca to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Approximately 500 pounds moves weekly, 90,000 pounds monthly, and between 900 and 1,000 pounds weekly to the respective points. Truckload and LTL shipments.	Red Ball, Central and private carriage.	Faster service needed. Commodities are fragile.	
[illegible] (1688) Knox Glass, Inc., Palestine, Tex. Glass containers.	From shipper's plant site at Palestine to Atlanta, Ga.; Birmingham, Ala., and Greenville, Miss. Between 9/1/66 and 10/31/66 about 156,016 pounds moved to Atlanta, about 750,000 pounds a year moves to Birmingham, and during summer months about 70,000 pounds a month moves to Greenville. Truckload and LTL shipments.	Red Ball, Dixie, Ryder, and private carriage.	Joint-line service inadequate.	Red Ball: If the authority herein were granted shipper would continue to utilize private carriage, in addition to the available motor common carrier service.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
194. (489) Charles Pfizer & Company, Dallas, Tex. Drugs, cosmetics, and pharmaceuticals	Between shipper's Atlanta, Ga., and Dallas facilities. Approximately 4,000 pounds moves a month to Dallas from Atlanta and twice this volume moves from Dallas.	Red Ball and Gordons.	Not receiving consistent second-day service.	Red Ball. Shipper is aware of other single-line carriers between Atlanta and Dallas, but did not give an explanation why their services were not satisfactory. Appears that traffic from Atlanta is routed by that office.
195. (490) Cunningham Transfer and Storage Co., Houston, Tex. Household goods and crated merchandise	From Houston to Atlanta, Ga., Birmingham, Ala., Greenville, and Jackson, Miss.	Red Ball, Roadway, and Sunset.	Interlining arrangement unsatisfactory. Problems in getting pickups. Carriers wait until 5:00 or 6:00 p.m. to make pickups and by that time their vehicles are almost full and there is not enough room for all of shipper's merchandise and shipper has to wait until next morning to get shipment picked up.	Strickland. Shipper states that some of existing carriers render direct service but that it has to wait to find out if a particular shipment will move direct. No cross-examination.
196. (491) Alloy Tube & Pipe Company, Houston, Tex. Stainless steel pipe and sheet, and aluminum pipe	From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss. Approximately between 100 and 2,000 pounds (6 shipments) moves monthly.	East Texas, Ryder, Mercury, Red Ball, and Merrin.	Shipper has difficulty in obtaining pickups on time.	Strickland. East Texas and Mercury offer single-line service to Jackson. Mercury offers single-line service to Birmingham. East Texas offers joint-line service to Atlanta.
197. (493) Trice Floor covering, Houston, Tex. Carpets and rugs	From points in Georgia, New Jersey, Pennsylvania, South Carolina, and Tennessee to Houston. Approximately 15,000 pounds moves a month.	East Texas, Roadway, and Ryder.	Need faster service. Average transit time from Dalton to Houston is 5.5 days, including weekends.	Johnson and Bowman.
198. (494) W. R. Curtis and Company, Houston, Tex. Glassware, chemicals, laboratory supplies, and machinery	From Houston to points in Maryland, Florida, Georgia, North Carolina, South Carolina, Alabama, Louisiana, Kentucky, Tennessee, and New Jersey; and from Philadelphia, Pa., New York, N.Y., and Baltimore, Md., to Houston. Approximately 100,000 pounds a month moves inbound and outbound.	East Texas, Merrin, Hoover, Johnson, Red Ball, Roadway, Ryder, Strickland, Transcon and Eastern Air Lines.	Interlining service inadequate. Wants single-line service.	Bowman, Johnson, and Red Ball. Shipper indicates that it has single-line service from Houston to New York and Rockville, Md. There are several carriers with single-line service from Houston to specified points in Florida, and Georgia.
199. (495) General Electric Co., Laminated Products Department, Chemical Metallurgical Division, Houston, Tex. Plastic laminate	From Tampa, Fla., Atlanta, Ga., Charlotte, N.C., and Jackson, Miss., to Houston and from Houston to Atlanta, Birmingham, Ala., and Greenville, and Jackson, Miss. Inbound - approximately 1,500 pounds (20 to 25 shipments) moves a month. Outbound - approximately 1,500 pounds (50 to 60 shipments) moves a month.	Bus lines, East Texas, Mercury, and Ryder.	Needs faster service. Wants second-day delivery on shipments to and from Atlanta, Birmingham, Jackson, and Greenville. Wants second-day pickup at Atlanta on company's Houston to Tampa shipments.	Strickland. Shipper would receive third-day service in a two-line haul from Charlotte and Tampa, if the application were granted.
200. (497) Mechanics Uniform Supply, Inc., Houston, Tex. Cotton wiper rags	From Atlanta, Ga., to Houston. Monthly shipments weigh between 1,300 and 3,500 pounds.	Roadway.	Faster and more consistent service needed.	Merrin.
201. (498) La France Industries, Houston, Tex. Furniture fabrics, mangabyde, and furniture supplies	From La France, S.C., Atlanta, Ga., Linden, N.J., New York, N.Y., and Boston, Mass., to Houston. Shipments weigh between 24 and 2,000 pounds.	Bus lines, East Texas, Red Ball, Roadway Ryder, Strickland, and T.I.M.E.	Interlining service inadequate. Needs more dependable service. Wants 2-day service from La France and Atlanta.	Bowman and Johnson. Shipper has made no specific complaints about any particular carrier, except Ryder. Frequency of traffic not given.
202. (499) Western Gear Corp. Skyclimber Division, Houston, Tex. Machinery, machinery parts and scaffolding equipment	From Atlanta, Ga., to Houston and from Houston to Atlanta, Birmingham, Mobile, and Montgomery, Ala. Shipments range between 100 and 1,000 pounds. Two shipments move a month to Atlanta; four a year to Montgomery, and 3 a year to Birmingham.	Roadway, and Ryder.	Needs faster service. Ryder gives late afternoon pickup. Wants 2-day service to and from Mobile, Birmingham and Montgomery.	Merrin.

Summary of evidence of supporting shippers—Continued

TRAL—Continued

Witness and shipper	Origin, destination, volume, type and frequency of traffic	Existing service utilized	Reasons for supporting application	Application supported and remarks
[illegible]	From Houston to points in Alabama, Florida, New Jersey, Pennsylvania, and Tennessee. Approximately 25,000 pounds per month.	Missouri Pacific Lines, Texas Pacific-Missouri Pacific Terminal Co., Southern Pacific Co. (Atlantic Steamship Lines), Texas and New Orleans Railroad Co., Texas Mexican Railway Co., Gulf Coast Lines, International-Great Northern Railroad Co., Missouri-Kansas-Texas Railroad Co., Kansas City Southern Railway Co., Louisiana and Arkansas Railway Co., Louisiana Railway and Navigation Co., Trailer Marine Transport Corp., Waterman Steamship Corp., Alabama Great Southern Railroad Co., Central of Georgia Railway Co., Illinois Central Railroad Co., Louisville and Nashville Railroad Co., Mobile and Ohio Railroad Co., Nashville, Chattanooga and St. Louis Railway, Southern Railway Co., Tennessee Central Railway Co., Atlantic Coast Line Railroad Co., Seaboard Air Line Railroad Co., Southern Railway System, Central Freight Lines, Inc., Chicago, Rock Island and Pacific Railroad Co., Fort Worth and Denver Railway Co., Gulf, Colorado and Santa Fe Railway Co., Texas and Pacific Railway Co., Texas-New Mexico Railway Co., Trailer Train Co., Transcontinental Freight Bureau, Western Trunk Line Committee, Southwestern Freight Bureau, Illinois Freight Association, Official Territory Freight Association, Southern Freight Association, Southwestern Freight Association, Western Trunk Line Committee, Southwestern Freight Association

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applicant supported and remarks
211. (5509) Daniel Radiator Corp., Houston, Tex. Radiator cores	From Houston, Fort Worth, and Dallas, Tex., to Atlanta, Ga., and Philadelphia, Pa.; and from Lancaster, Pa., and Perth Amboy, N.J., to Houston. In 3 months in 1946 50,859 pounds (15 shipments) moved to Philadelphia.	Brown Express, East Texas, Johnson, Kramer, Consolidated, Mushroom Transport, Roadway, Springmeier Ship., Strickland, Transcon, and Woolsyhan	Needs faster service. On 15 shipments average transit time was 9.4 days including weekends. Wants 3- or 4-day service.	Bowman and Johnson Shipper is aware of two or three single-line carriers from Houston to Philadelphia. Witness (19 (374) under Tex heading, on behalf of same shipper supported Strickland. It appears that Ryder has single-line service to Philadelphia from Houston. Strickland, Harris serves points in Arkansas; Red Ball serves Greenville, and Jackson, Mercury serves Birmingham, and Ryder serves Atlanta. Shipper has only made general complaints against existing services.
212. (510) General Electric Company, Distribution Assemblies Department, Construction Industries Division, Houston, Tex. Electric controller and related parts	From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss., and points in Arkansas approximately between 18,000 and 20,000 pounds of TL and LTL shipments moves weekly.	Harris, Red Ball, Mercury, and Ryder	Needs faster service. Shipper has received complaints from customers.	
213. (513) Mid-Pak, Inc., Houston, Tex. Food Packaging machinery and component parts and accessories	From Houston to points in Alabama, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia. Shipments weigh between 24 and 12,000 pounds, and a total of 370,000 pounds moved to the destination States during a six-month period in 1946.	Roadway, Ryder, Consolidated, Harris, Strickland, Yellow Transit, Mercury, and Lee Way	Needs faster service and machines subject to damage in two-line service	Bowman and Johnson. Alaska: can render shipper single-line service
214. (514) Robert Butler Company, Division of H.B. Butler, Inc., Bryan, Tex. Iron and steel articles and metal buildings	From Birmingham, Ala., to points in Texas. Monthly LTL and TL shipments weigh between 8,710 and 150,000 pounds.	Eagle, Central, and Red Ball	Joint-line service inadequate, damage to products, and needs the service of a carrier with a local terminal for expedited pickups and deliveries	Red Ball. Shipper needs the dependable service of a carrier to make scheduled pickups and deliveries so that it can arrange for unloading. Red Ball has terminal near shipper and has been found dependable. Bowman and Johnson. Unsupported complaints.
215. (516) A.I.M., Inc., Houston, Tex. Materials handling equipment	From Augusta, Ga., to Houston. From Somerville, Mass. to Houston, Beaumont, Orange, and Texas City, Tex., and, from Springfield, Tenn., to Houston. Approximately 1,000 pounds (three to four shipments), moves a week.	Strickland, Bowman, East Texas, Ryder, and Barrett	Needs faster service. Wants single-line service.	
216. (517) Wright Light, Inc., Houston, Tex. Fluorescent light fixtures and parts	From Houston to Atlanta, Ga., and Jackson, Miss. Approximately between 200 and 1,500 pounds moves two to three times a month to Atlanta and approximately between 200 and 1,500 pounds moves twice a week to Jackson.	Red Ball, Mercury, East Texas, Ryder, and United.	Needs faster service. Wants 2-day service between Jackson and Houston and 2-day service from Houston to Atlanta.	Harris. No specific complaint against any particular carrier.
217. (518) Anchor Wire Rope Company, Houston, Tex. Wire rope and wire rope assemblies	From Houston to Atlanta, Ga., and Jackson, Miss.; and from Jackson, Miss., to Houston between 200 and 3,000 pounds (approximately three shipments) move a week. (Truckload and LTL shipments.)	Red Ball, Mercury, Roadway, and Brunwell.	Needs faster, more dependable service. Wants second-morning service from Houston to Atlanta and 1-day service between Jackson and Houston.	Harris. It appears that Roadway, East Texas, and Mercury offer single-line service to Atlanta. Red Ball is the only existing service against which specific complaint was made.
218. (519) The Stephens Company of Houston, Tex. Carpets, tile and linoleum	Inbound to Houston from points in Georgia, Pennsylvania, New York, South Carolina, Florida, and Tennessee. Company received a total of 27 shipments during a 3-month period in 1946 from the origin States with each shipment weighing between 71 and 32,450 pounds.	East Texas, Ryder, and Roadway.	Wants 3-day service from New York, and Pennsylvania area. Wants 2-day service from the Carolinas, and Tennessee. Wants third-day service from Florida. Average transit time from Tennessee points is 6.8 days; from Georgia 3 days; from Florida 7 days, from New York 10 days; and from Pennsylvania is 10 days. (No figures given for other points.)	Bowman and Johnson. Shipper has not tried Ryder's single-line service from New York and Philadelphia. Even if the authority were granted, it appears that neither Harris nor Johnson could render single-line service from points in Tennessee or Georgia.
219. (520) P. & C Merchandising, Inc., Houston, Tex. Advertising materials to-wit: Point-of-sale display report forms and other printed matter	From Houston to Atlanta, Ga., Jackson, Miss. Birmingham and Mobile, Ala. Shipments weigh between 50 and 300 pounds.	Greyhound and R.E.A.	Greyhound has no pickup and delivery service. Shipper is not satisfied with transit time of existing service. Wants 1-day service to Jackson; 2-day service to Atlanta, and Birmingham and first afternoon service to Mobile.	Harris. Shipper has used only the service of Greyhound and R.E.A. in the 3 years it has been in business. Frequency of traffic not given.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location, and commodities	Operations, volume, type of service, and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported by witnesses
(527) Dr. [illegible] Manufacturing Co., Inc., Houston, Tex. Electric fans (527) Mr. Mack Tire Corp., Houston, Tex. Tires (523) [illegible] Inc., Houston, Tex. [illegible] (524) White Rubber Manufacturing Company, Houston, Tex. Pipe fittings and chemical compounds	From Houston to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Monthly shipments of approximately 17,500, 15,000, and 15,000 pounds, respectively	Ryder, Red Ball, East Texas, and Contra.	Complaints from customers regarding transit time. Prefers single-line service. Wants proposed second-day service to Greenville, Birmingham, and Atlanta.	Rec Ba... Shipments are seasonal. Shipper states that it receives occasional shipments from Birmingham, but no volume is given. Red Ba...
	From Houston to Greenville, Miss. Between February and October 1960, 23 shipments moved to Greenville. Each shipment weighing about 775 pounds	Red Ba... interlining with Delta	Needs faster service	
	From Atlanta, Ga., to Houston and to [illegible] Louisiana and Arkansas. Approximately 312 pounds moves twice a week	Jack Hall is used in interline with Red Ba...	Needs faster service. Joint line service inadequate. Wants single-line service	Red Ball
	From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Monthly shipments of approximately 6,000, 4,000 and 1,500 pounds, respectively	East Texas, Ryder, and Red Ba...	It has a competitor in Memphis, Tenn., giving overnight service to customers in Greenville, Miss., thus, it needs faster, single-line service to Greenville to compete	Red Ball. Shipper's primary customers here in Greenville, Miss. East Texas already serves shipper in single-line service to Atlanta and Birmingham, but shipper desires additional service to these points.
(525) Anchor Fence Division, Anchor Post Products, Inc., of Texas, Houston, Tex. Chain link fencing and related items (526) Thermo-Engineering Corp., Houston, Tex. Air-handling units (527) United Cotton Goods Co., Seguin, Tex. Cotton materials	From Houston to Birmingham, Ala., and Greenville, Miss. Approximately 700 pounds (two shipments) across a week	Mercury and Red Ba...	Delay in [illegible] and similar loading area. Wants to have regular pickups each day	Red Ball. Shipper produced no specific evidence to show inadequate service.
	From Houston to Atlanta, Ga., Birmingham, Ala., and Jackson, Miss. Approximately 4,000 pounds (300 shipments across annually	Brave..., Red Ba..., Roadway, and East Texas	Poor pickup service. Presently allows 7 to 8 days load time to Southeastern points.	Strickland. No specific complaint against any specified carrier.
From Tyler, Greenville, Lyons and Dallas, to [illegible] Rosemary and Roanoke Rapids, N.C., Atlanta, Griffin, Dallas, La Grange, and Thomaston, Ga., and Fairfax, Ala., to Seguin. Approximately 100 shipments move a month weighing between 600 and 3,000 pounds a shipment. From Atlanta and Statesboro, Ga., Vicksburg, Miss., and Magnolia, Ark., to McGregor and from McGregor to points in Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee (inbound about 500 pounds a shipment with 100 shipments a month. Outbound - 200 shipments a month consisting of LTL and TL. From Atlanta, Ga., and Asheville, N.C., to San Antonio. Approximately between 100 and 1,000 pounds a shipment ranging from 1 to 25 shipments a month. Outbound traffic moves to Florida two or three times a month. The shipments weigh about 1,500 pounds	Ryder, Nordan, Central, Roadway, Thurston, Georgia Highway, Norris, and East Texas	Joint line service causes damage to products and is too slow. Wants 1- or 2-day service between Atlanta and San Antonio, Tex., which would be [illegible] portion of the interline.	Strickland's portion of the interline. Strickland Shipper does not appear to control routing. It stated that existing service "has been good."
	"A... over...shin" Red Ball, East Texas, and Ryder	Needs faster service. Wants overnight service from Dallas to Jackson and second-day service to Atlanta and Birmingham	Strickland	
(528) Yuc Cap Equipment Company, San Antonio, Tex. Curing tubes, tire repair materials, rubber scrap and tire lathes (529) (531) Lone Star Beer, San Antonio, Tex. Folding cartons (532) Continental Porcelain Enamels, Inc., Houston, Tex. Porcelain ware (533) [illegible] Florenville, Tex. Clothing	From Atlanta, Ga., and Asheville, N.C., to San Antonio. Approximately between 100 and 1,000 pounds a shipment ranging from 1 to 25 shipments a month. Outbound traffic moves to Florida two or three times a month. The shipments weigh about 1,500 pounds	East Texas, Roadway Merchants, and Ryder	Damage to products and difficulty in [illegible] claims. Average transit time is 6 days. Wants second-morning service or 3-day service. One of shipper's customers has requested that Ryder not be used on this customer's traffic - Wan... Fla.	Strickland. Ryder and Roadway serve shipper in single-line service.
From Atlanta, Ga., to San Antonio. Company receives 3 truckloads each month from Atlanta		Strickland, S & P Railroad, and Roadway	Needs better pickup service. Wants 2-day service between Atlanta and San Antonio.	Strickland. No specific complaints. Shipper wants backup service.
From Houston to points in Georgia, Alabama, Mississippi, Florida, and Tennessee. Shipments weigh between 100 and 10,000 pounds		Red Ball, Marvin, Ryder, and Mercury	Needs faster service. Joint-line service inadequate because product susceptible to damage. Wants second-day delivery to Birmingham and Atlanta.	Beaman and Johnson. Frequency of traffic not given.
From points in Georgia, Virginia, West Virginia, and Tennessee to Florenville. Shipments weigh between 100 and 500 pounds with 3 to 6 shipments a week		East Texas, Longe, Tamiami, T.I.M.E., Texas Oklahoma, Brown, Bowman, Georgia Highway, Thompson, and Baggett.	Needs faster service. Presently allows 3 to 3 weeks load time. Wants 2-day transit time from Atlanta and Birmingham to San Antonio.	Strickland. No specific complaints.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
233. (526) C. A. Stevens Furniture Co., Houston, Tex. Home furniture, carpets and draperies	From Roxboro, Hickory, Morganton, Hendersonville, Lenoir, Taylorsville, and Leaksville, N.C.; Montgomery, Ala.; Jacksonville, Fla., New Brunswick, N.J., and Auburn and New York, N.Y., to Houston. From 1/18 through 10/5/46, 103 shipments weighing 19,988 pounds were received from these points. Shipments weigh between 15 and 1,495 pounds.	Ryder, Roadway, Morrin, East Texas, W & L, Stott Davis, Strickland, and rail service.	Needs faster service to deliver special orders. Average transit time 4 days, including weekends. Wants second-day delivery from Carolinas and third and fourth day delivery from Knoxville and the east coast. Wants 2-day service from Florida and Georgia points.	Johnson and Bowman. Rail is shipper's main form of transportation. Frequency of traffic not given.
233. (555) Walgreen Drug Stores, Chicago, Ill. Clothing, Towels, and other household items.	From points in Georgia, Alabama, Mississippi, North Carolina, South Carolina and Tennessee, to shipper's Houston, Tex. warehouses or directly to stores. Approximately between 50,000 and 75,000 pounds moves monthly.	Morrin, Eastern Texas, Roadway, and Ryder.	Needs faster service (would like transit time under 5 days). It now receives average transit time of about 6 days.	Johnson and Bowman.
234. (536) Magnus Tool Company, Houston, Tex. Industrial rock bits	From Houston and Dallas, Tex., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, Connecticut, Maine, New York, and Pennsylvania. Shipments weigh between 351 pounds and 4,791 pounds.	Roadway, Strickland, Mercury, Transcon, and Lone Texas.	Joint-line service inadequate.	Johnson and Bowman. Shipper states that he is aware of single-line service to several of the destination points named, including Roadway to Pennsylvania, but believes competition is good.
235. (537) Wilson Supply Company, Houston, Tex. Oil field supplies, fittings, and valves.	From Birmingham, Ala., Charlotte, N.C., Philadelphia, Pa., and New Haven, Conn., to Houston. Receives a shipment from Birmingham every 45 to 60 days, weighing about 500 pounds; from Charlotte every 45 days weighing about 250 pounds; from Philadelphia every 45 days weighing about 500 pounds, and from New Haven twice a year weighing about 150 pounds each.	Acme, Ryder, and Shippers and Receivers Association.	Needs faster service. Wants 2-day service out of Birmingham, 3-day service out of Charlotte, 4-day service out of Philadelphia and 6-day service out of New Haven.	Bowman and Johnson. Shipper admits that it has more than one single-line carrier operating between named origin points and Houston.
236. (538) Dilly Uniform Co., Houston, Tex. Industrial clothing.	From points in Alabama, Georgia, New York, Massachusetts, Pennsylvania, South Carolina, Virginia, North Carolina, and Maryland, to Houston. Total volume of 98,391 pounds for period January 1945 to April 1946 with 154 shipments.	Pilot, Eastern, Transcon, Acme, Roadway, Standard, Ryder, Perkins, Overnite, T.I.M.E. All States, Duncan, ET&WNC, Cooper, Thurston, Jack Cole, Dixie, Floyd & Beasley, Mason & Dimon, Georgia Hwy., CM&N, Southern, Carolina, Catawba, and Turner.	Needs faster service. With interline service shipper receives between 3- and 11-day service, with Roadway's direct service it receives between 2- and 10-day service, and with Ryder's direct service it receives between 3- and 7-day service.	Bowman and Johnson. Transit study includes all traffic during the study period.
237. (539) The Three Weavers, Houston, Tex. Woolen and orlon yard, and handloomed fabrics.	From Philadelphia, Pa., and Sandford, N.C. to Houston. Shipments weigh between 63 and 1,391 pounds.	Strickland, Roadway, and Springweiler.	Needs more consistent service. Wants faster service. Average transit time 7.1 days, including weekends.	Bowman and Johnson. No specific complaint. Transit time does not include all shipments during the study period.
238. (546) Pure Oil Co., Smiths Bluff, Tex. Petroleum products, in drums and cases.	From Smiths Bluff, to points in Alabama, Florida, Tennessee, and to Greenville, Miss. Monthly 75 shipments of approximately 900,000 pounds.	Ryder and Baggett.	Faster service.	Baggett, Deaton, Bowman, and Red Ball. It appears that Ryder and Baggett presently serve most of the points in single-line or joint-line service.
239. (553) Houston, Tex.	See shipper under Alabama heading.			
240. (554) Baytown, Tex.	See shipper under N.C. heading.			
241. (631) Standard Bag Company, Houston, Tex. Cotton piece goods.	From points in Georgia, North Carolina, and South Carolina, to Houston. About 200,000 pounds moves annually.	Roadway, Ryder, Bowman, United Mercury, Red Ball, and Strickland.	Wants faster service. Wants third-day service. The average transit time is 6 days, including weekends. Presently allows between 5 and 7 days load time.	Bowman, Johnson, and Red Ball. No specific complaints. Transit time includes all shipments made during period.
242. (634) Ayoush Distributing Co., Texarkana, Tex. Sporting goods and general hardware.	From Texarkana to points in Arkansas; from Birmingham, Ala., to Texarkana. Shipments weigh between 100 and 10,000 pounds.	Southwestern, and bus lines	Wants faster service.	Strickland. No specific complaints. Frequency of traffic not given.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, [illegible]	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (697) [illegible] Co. [illegible] Kansas [illegible]	a. From shipper's facilities at Sulphur Springs, Tex., and Chamblee (Atlanta), Ga., to points in Georgia, Alabama, Mississippi, and other eastern and southeastern States. (b) From Chamblee to Texas. (c) From points in the southeast to Sulphur Springs, and from mills located in Texas to Boaz, Ala. (d) From shipper's facilities at Boaz to Sulphur Springs. Monthly shipments weigh between 29,869 and 39,827 pounds.	Red Ball, Gordons, Bee Line, Dixie and Southwestern	Needs a carrier, in addition to Southwestern, to service Sulphur Springs, Tex.	Red Ball. No complaint except that only one carrier serves Sulphur Springs.
244 (708) Co-operative Rose Growers, Inc., Tyler, Tex. Rose bushes	From Tyler to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Approximately 5.2 million pounds moves yearly.	Red Ball, and Southwestern	Joint-line service inadequate	Red Ball. It appears that East Texas can serve shipper in single-line service to Atlanta and Birmingham. The involved commodities are perishable. No specific complaints.
245 (722) [illegible] Manufacturing Co., Amarillo, Tex. Rebuilt automotive parts	From Amarillo to Atlanta, Ga., and return. Inbound shipments from Atlanta average about 1 a week. Shipper periodically transports machinery to Atlanta. During December 1966 six shipments were received from Atlanta with a total weight of 21,626 pounds.	Red Ball interlining with Cole and Transcontinental	Desires faster service. Wants 1-day service to Atlanta.	Red Ball.
246 (736) Glover Company, Greenville, Tex. Inbound cotton piece goods. Outbound children's clothing	Inbound—from points in North Carolina, South Carolina and Atlanta, Ga., to Greenville. (100 shipments a month), and outbound—from Greenville to points in Arkansas, Louisiana, Mississippi, Alabama, and Georgia. Shipments are LTL weighing from 100 to 500 pounds.	Central and Red Ball	Present service too slow. Average transit time is 5 to 7 days. Wants 2-day service from Atlanta to Dallas.	Strickland and Bowman. Bowman and Strickland can presently render a joint-line service from the Carolinas to Greenville using the Memphis gateway. Ryder can serve Henderson, N.C. direct.
247 (743) L. O. Hammons Home Store, Paris, Tex. Suits, shirts and slacks	From Atlanta and Bremen, Ga., to Paris. Receives three to four shipments a week from Atlanta, each is LTL and weighs about 50 pounds.	Red Ball, T & P, S & P, Texas Pacific, Southern Pacific, MFA, Roadway, and Gordons	Wants faster service.	Red Ball. Roadway can offer direct-line service from Atlanta to Paris. Shipper does not designate the carrier.
248 (747) Texas Tempered Glass Company, Houston, Tex. Window glass	From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships about 20,000 pounds a month to the southeast in (LTL).	Roadway, Red Ball, and Mercury	Wants single-line service so there is less handling of the glass. Has damage problems with Roadway.	Red Ball. Shipper is entirely satisfied with Mercury's direct service to Birmingham.
249 (749) Smith Tank and Equipment Company, Inc., Tyler, Tex. Tanks and tank parts	From Atlanta and Commerce, Ga., to Tyler. Shipper receives 3 tons a month.	Red Ball, Northeastern, Southwestern, and ETMF	Wants faster service because of its limited storage facilities.	Red Ball. ETMF can serve Tyler directly from Atlanta.
250 (750) Houston, Tex.	See shipper under Louisiana heading.			
251 (758) Tyler Pipe and Foundry Company, Tyler, Tex. Cast iron pipe and fittings	From Tyler to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships LTL lots of about 400,000 to 450,000 pounds collectively a month to the above area. Each shipment averages about 775 pounds.	Red Ball, ETMF, Roadway, Consolidated, Southwestern and Missouri Pacific	Wants faster transit time because pipes go directly to plumbers who generally have no inventory.	Red Ball. Roadway offers single-line service to Atlanta. Shipper has the direct service of two irregular route common carriers (50 percent of the tonnage moves by them).
252 (763) Carrier Air Conditioning Company, Tyler, Tex. Air conditioners, coolers, freezers, furnaces	From Tyler to Greenville, Miss., Atlanta, Ga., and Birmingham, Ala. Has one shipment a week to Atlanta and Greenville and one shipment every 2 weeks to Birmingham. The average weight of these shipments is 1,000 pounds. Also ships 15,000 pounds a month over Atlanta and Birmingham gateways.	Red Ball, ETMF, and Roadway.	Single-line service would be more convenient for it would cut transit time and lessen the chance for damage.	Red Ball. Shipper only had minor complaints about the service.
253 (765) Ryle Manufacturing Company, Wichita Falls, Tex. Chain and sprocket drives	From Wichita Falls to Atlanta, Ga. (as a gateway). Ships 2,000 pounds a month to Atlanta and about 6,000 pounds a month to Atlanta as a gateway for interchange. Average weight of shipment is 250 pounds.	Central, Red Ball, Merchants, ICS interchanging with Ryder, and Roadway.	Desires a single-line service to avoid tracing and delay problems.	Red Ball.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
254. (775) Labus Manufacturing Company, Longview, Tex. Load binders, blocks, tail chains and hooks	From Longview to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships in LTL lots weighing 450 to 500 pounds.	Red Ball, and ETMF	Would prefer the convenience of having two carriers and a single-line service.	Red Ball. Shipper has no complaints with present service.
255. (777) James F. Kane Company, Amarillo, Tex. Valve, pipe, and tube fittings	From Birmingham, Ala., to Amarillo. Receives eight shipments a month, each weighing about 1,000 pounds LTL.	Transcon, ETMF, interlining with I.C.X., Gordons, and Red Ball.	Wants second-morning service out of Birmingham as RR proposes. Allows a lead time of 2 weeks. Wants proposed 2-day service.	Red Ball. Transcon offers single-line service from Birmingham to Amarillo.
256. (790) B Beall Brothers, Inc., Jacksonville, Tex. Clothing	From Atlanta, Ga., Birmingham, Ala., as gateways to points in Texas. In June 1966 company received 263,561 pounds at its Jacksonville warehouse and received same amount collectively at its 51 stores located at other points in Texas during same period. This is representative of company's inbound monthly traffic.	Red Ball, M.P.T. SWT, and B.P.T.	Believes Red Ball will give faster service. Wants 1 to 2-day faster service.	Red Ball.
257. (792) King Candy Company, Fort Worth, Tex. Candy	From Fort Worth to points in Mississippi. Ships between 1,000 and 2,000 shipments a year to above points. Each shipment weighs between 100 and 150 pounds (LTL).	Red Ball and Jones.	Wants Strickland's second-morning service. Too many delayed shipments with present service. Presently allowing 5-to-10-day lead time to Jackson.	Strickland. Shipper has need refrigerated service during the summer months. Strickland cannot offer such service. Present delivery time is 5-to-10 days.
258. (793) (a) Texas Refinery Corp., Fort Worth, Tex. (b) American Lubricant Co., Dayton, Ohio (c) Royal Oil Co., Fort Worth, Tex. Petroleum oils and greases	From Fort Worth to points in Alabama, Georgia, Florida, Tennessee, Virginia, North and South Carolina, Maryland, Pennsylvania, Delaware and the New England States. Traffic moves in LTL lots with each shipment weighing about 800 pounds.	T&P, Red Ball, Mercury, Braswell, Transcon, Roadway, Strickland, Central, Georgia Highway, Overnite, and Bowman.	Wants a single-line service to ease tracing problem and lessen the amount of damage.	Bowman and Johnson. Has single-line carriers to most points in Alabama and Georgia. Has one single-line service to South Carolina. Has Strickland single-line service to Maryland and Delaware. Service to Memphis is described as satisfactory.
259. (796) Hanson-Kickerwick, Inc., Greenville, Tex. Lingerie	From points in North and South Carolina to Greenville. Receives 30 to 40 shipments a month weighing from 100 to 3,000 pounds (LTL).	Roadway interchanging with Red Ball at Dallas, Tex. Thurston with ETMF, Overnite, and Southwestern.	Wants faster service. Allows 7 days' lead time from the Carolinas.	Strickland. Strickland has single-line authority from Memphis to Greenville. This application concerns Atlanta gateway. Shipper indicates that the present service can be improved. Shipper had not heard of Ryder or Bowman.
260. (797) Industrial Steel Building Company, Tyler, Tex. Steel building and parts	From Birmingham, Ala., to points in Texas. Received about 450,000 pounds in 1966. Shipments ranged in size from minimum amounts to TL lots. Expected to ship almost 600,000 pounds in TL lots in 1967, and about 50,000 pounds of LTL to points in east Texas.	East Texas, Southwestern, Eagle, Red Ball, and Gordons.	Delivery time is very important because most shipments move to jobsites. Wants faster and a more scheduled service.	Red Ball. East Texas serves the following Texas points direct from Birmingham: Marshall, Tyler, Longview, Henderson, Lufkin, Kilgore, Carthage, Turnertown, and Swan.
261. (805) Jasper Fiber Products, Inc., Jasper, Tex. Outbound-molded paper fiber products. Inbound-chemicals in drums.	From Jasper to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships 100 to 3,000 pounds. No time period mentioned. From Atlanta, Ga., to Jasper (250 pounds two times a month).	Santa Fe, Red Ball, Ryder, and Roadway.	Wants faster service. Shipper wants second-morning service to Birmingham and Greenville; third-morning service to Atlanta.	Red Ball. Dupont routes the inbound traffic and they do not support Red Ball.
262. (808) Graham Magnetics, Inc., Graham, Tex. Magnetic tapes	From Graham to Atlanta, Ga., and Birmingham, Ala. Shipper could not give figures on frequency or volume of shipments moving to Atlanta. In a 1-month period three shipments (LTL) were sent to Birmingham weighing between 48 and 294 pounds.	Red Ball, ICX, and Morgan.	Wants a faster dependable single-line service to Atlanta, Birmingham, and Greenville gateways.	Red Ball. Computer waiting time may cost $300.00 an hour and, therefore, delays in delivering tape must be avoided. Shipper is presently moving this traffic by air.

January 1 evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Applications supported and remarks
261 (829) [illegible] Texas Coffin Co., Waco, and Amarillo, Tex Piece good and casket handles	Inbound from Atlanta, Ga., to shipper's facilities at Waco and Amarillo. Between January 1941 and October 1944 shipper received over 100 shipments from Atlanta weighing from 85 to 1,000 pounds with an average weight of 300 pounds	Red Ball, Red Arrow, S.V. and Transcon.	Wants faster de...veries	Red Ball. Shipper had never heard of Roadway and was unaware of the fact that it can serve Waco and Amarillo from Atlanta.
262 (822) Bonita Boat Company, Inc., Bossier, Tex Footwear	To Bossier [illegible] points in Arkansas, Louisiana, Alabama, and Georgia. Shipments are LTL weighing from minimum to 9,500 pounds.	Central.	Wants faster delivery	Strickland. Supports Strickland from Dallas to destination points shipper will use. Cannot, from Bossier to Dallas. Strickland proposed service is no different from several existing carriers with authority out of Dallas. Shipper already has a two-line service.
263 (829) [illegible] Manufacturing Co., Houston, Tex Equipment for oil and natural gas wells	See shipper under Oklahoma heading	Transcon, Mercury, ETMT, and Red Ball	Existing service is inconsistent	Red Ball. No specific complaints or examples of inconsistencies set forth
264 (831) Industrial Supply Co., Wichita Falls, Tex Oil and gas valves	From Birmingham, Ala., to shipper's stores at Wichita Falls, Electra, Kamay, Iowa Park, and Graham, Tex. Collectively, receives about 6,000 pounds monthly to the destination points	Mercury, Red Ball, T.I.M., and Merchants	Current service is too slow. [illegible] lost time of 10- to 14-days. Says from Birmingham	Red Ball. It appears that shipper does not always specify routings. No definite complaints or examples of inadequate service shown.
265 (838) Warehouse Plastics Corporation, Iverson, Tex Liquid plastic	From Marietta, Ga., to Iverson: Receives 3 shipments a month with an average weight of 2,500 pounds a shipment. From Iverson to unnamed points in the Southeast. No volume figures presented	Atlanta Motor, Ryder, Brown, Central, Strickland, Johnson, Houston, Roadway, STS, WTA, and Braswell	Present service is too slow. Wants a faster joint-line service. Average transit time is 6-8 days, including weekends. Wants 2-day service.	Strickland. Roadway serves Marietta directly and offers 2-day service to Iverson.
266 (839) The Southern Supply Company, Dallas, Tex Hardware, and agricultural implements	From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volume of LTL shipments move to Dallas: From Birmingham 750,000 pounds; from Atlanta 500,000 pounds; and from Columbus (100,000 pounds)	Transcon, Mercury, Red Ball, Dixie, and Georgia Highway.	Wants faster and more consistent service. Prefers single ...ne service. Wants to eliminate 1 day of transit time.	Red Ball. Shipper has limited dock space.
267 (840) Henry of Pudden Hill, Greenville, Tex. Pecan fruit cakes	From Greenville to points in the Southeast. Total shipments in 1944 equaled 210,000 pounds, but this is to all points in the United States. Each shipment weighs between 20 and 200 pounds. Only 5 to 10 percent of all sales to the southeast. Shipper estimates that about 10,000 pounds were shipped into the southeast in 1944 in about 1,500 individual shipments	RLA, Red Ball, Central, and Tamiami	Most of shipments occur the last quarter of each year. Needs faster and reliable deliveries for Christmas rush. Carriers have lost shipments in the past	Brenham
271 (842) T. A. Littlefield & Sons, Wichita Falls, Tex. Knocked-down steel buildings	From Birmingham, Ala., to points in Texas. Receives 30,000 pounds a month from Birmingham. Shipments weigh 8,000 to 30,000 pounds	Mercury, Campbell, ICX, Texhoma, Central, Red Ball, and Eagle.	Wants single-line service to reduce delays because shipper usually has a completion deadline to meet. Allowing 7- to 10- days lead time out of Birmingham. Wants proposed third-morning service. Wants a faster joint-line service.	Red Ball.
272 (853) Rangaire Corp., Cleburne, Tex Air-conditioning units	From Cleburne to points in Arkansas, Mississippi, and Alabama. Ships up to 1,000 shipments a month to above destinations. Each shipments weighs about 1,000 pounds.	Central, Strickland, Jones, and Red Ball.	[illegible] ...ovide the [illegible] ...ute ...o other single or joint-line operations. Proposed service would still give shipper a three-line haul.	Strickland. There are several existing carriers which can provide the
273 (887) [illegible] San Antonio, Austin, Fort Worth, Irving, Garland, and Corpus Christi, Tex	See shipper under Louisiana heading			
274 (889) [illegible] Sulphur Springs, Tex	See shipper under Arkansas heading			
275 (917) 30 stores	See shipper under Pennsylvania heading			

Summary of evidence of supporting shippers—Continued

VIRGINIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reasons for supporting application	Application supported and remarks
1. (325) A. H. Robins Co., Richmond, Va. Pharmaceuticals	From Richmond, Va., to points in Mississippi and to a warehouse in Dallas, Tex. TL traffic to Dallas, LTL to Mississippi.	Joint-line to Mississippi. Originating carriers are Bowman, Johnson, and Overnight. Connecting carriers are Viking, Campbell, and West. Dallas traffic is handled in joint-line service by Morris, Nelson, New Penn, ETMF, Bowman, and Southeastern.	Complained of slow deliveries. Shipper has expanding markets. It needs emergency expedited service. Shipper wants 2- or 3-day single-line service.	Bowman and Johnson. Roadway has single-line service to Dallas, but shipper refuses to use it because it failed to make pickups in past.
2. (326) Polk Miller Products Corporation, Richmond, Va. Rug drugs, insecticides, food supplements, printed matter, soap, and cleaning compounds.	From Richmond between 12/31/65 and 7/25/66, shipper had movements to Kansas City, Nashville, Springfield, St. Louis, and Affton, Mo.; Port Polk and Houston, La.; Topeka, Lens., Houston and Dallas, Tex., and Little Rock, Ark., LTL and TL shipments.	Bowman originates shipper's traffic and interlines it at Memphis, Tenn., and Birmingham, Ala. Dixie also originates the traffic and interlines it at Atlanta, Ga. Gordons.	Wants 3- or 4-day service on TL shipments and 4- to 5-day service on LTL shipments. Wants direct service to reduce damage.	Bowman and Johnson.
3. (327) Titmus Optical Co., Inc., Petersburg, Va. Lens blanks, spectacle frames, and optical instruments.	From Petersburg during June and July 1966 shipper had movements (represents 85 percent of all movements handled by motor common carriers to the involved territory during this period) to Dallas, Beaumont, Abilene, San Antonio, Corpus Christi, Fort Worth, Crowley, Amarillo, and Longview, Tex.; Ada and Oklahoma City, Okla., Little Rock and North Little Rock, Ark., Shreveport and New Orleans, La., and Jefferson City and Kansas City, Mo.	Bowman with connecting carriers and parcel post.	Has experienced difficulties in meeting competition due to delays in transit. Desires direct service to reduce damage.	Bowman and Johnson.
4. (360) Clark Gum Company & Phillip Morris, Inc., Richmond, Va. Tobacco products	From Richmond to Shreveport, La., Little Rock, Ark., Houston and Ft. Worth, Tex., and Kansas City, Kans. During January 1967 shipper had nine shipments to the above points, each shipment weighed about 39,000 pounds.	Bowman, Roadway, Overnite, Transcon.	Wants improved service. Claims Roadway's loaders are not reliable. On TL shipments lead time of 3 days to Shreveport is allowed. 3 to 4 days to points in Texas, Arkansas, and Missouri. Shipper has had difficulty in obtaining timely pickup service and in having interlining carrier accept its traffic at specified gateways.	Bowman. Several interline combinations available to shipper.
5. (361) Richmond Engineering Co., Inc., Richmond, Va. Water heaters and tanks.	From Richmond, Va., to points in Texas, Louisiana, and Mississippi. From 2/4/66 to 12/29/66 shipper had 10 LTL shipments. Weight range 70 to 16,000 pounds.	Bowman, Superior Trucking, ETMF, Roadway, Jetco, Transcon, Johnson.	Wants faster single-line service.	Bowman. Transcontinental and Roadway offer single-line service to some of the involved points. Morris and Ryder can render joint-line service to most of the involved points. Van, open top or flat bed equipment.

APPENDIX F

Population[1]

	1960 census	1970 census
Southwest		
Arkansas	1,786,272	1,886,210
Colorado	1,753,947	2,178,176
Louisiana	3,257,022	3,564,310
New Mexico	951,023	1,014,979
Oklahoma	2,328,284	2,498,378
Texas	9,579,677	10,989,128
Southeast		
Alabama	3,266,740	3,373,006
Florida	4,951,560	6,671,162
Georgia	3,943,116	4,492,038
Kentucky	3,038,156	3,160,555
Mississippi	2,178,141	2,158,872
North Carolina	4,556,155	4,981,832
South Carolina	2,382,594	2,522,881
Tennessee	3,567,089	3,838,777
Virginia	3,966,949	4,543,249
Middle Atlantic and New England States		
Connecticut	2,535,284	2,987,950
Delaware	446,292	542,979
Maryland	3,100,689	3,874,642
Massachusetts	5,148,578	5,630,224
New Hampshire	606,921	722,753
New Jersey	6,066,782	7,092,597
New York	16,782,804	18,018,615
Pennsylvania	11,319,366	11,669,565
Rhode Island	859,488	922,461
Midwest		
Kansas	2,178,611	2,222,173
Missouri	4,319,813	4,636,247

[1]Populations are taken from the 1961 and 1971 editions of *Rand McNally Road Atlas.*

APPENDIX G

Protestants

Of the 60 protestants remaining in this proceeding for which appearances were entered, evidence was presented on behalf of 48 of them through the testimony of 62 witnesses and numerous exhibits. This is summarized as follows:

HOLLOWAY MOTOR EXPRESS, INC. (HOLLOWAY) - GADSDEN, ALA.

Protest: - The Bowman application insofar as it seeks authority for the transportation of general commodities between Birmingham, Ala., on the east and Topeka, Kans., Kansas City, Kans., and Kansas City, Mo., on the west.

Operations: - Insofar as this application is concerned Holloway is authorized to transport over irregular routes:

Tires, tire fabrics, tire treads, and related items generally between Topeka, Kans., and points within 10 miles of Topeka, Kansas City, Kans., Kansas City, Mo., and points in Missouri within 10 miles of Kansas City, on the one hand, and, on the other, Birmingham, Decatur and Gadsden, Ala., Cedartown, Rockmart, Cartersville and Atlanta, Ga., and points within 10 miles of Atlanta, and Memphis, Tenn.; also

Paper and printed forms from Topeka to Birmingham and Gadsden, also

Grain, grain products, grain byproducts, animal and poultry feeds and ingredients thereof, generally from points in Kansas and Missouri (except St. Louis and its commercial zone and certain other areas) and from Alton, Ill., to points in Alabama north of a line extending along U. S. Highway 84 from the Mississippi-Alabama State line to junction U. S. Highway 331 near Opp, Ala., thence along U. S. Highway 331 to junction U. S. Highway 80 at Montgomery, thence along U. S. Highway 80 to the Alabama-Georgia State line, and to points in Georgia north of U. S. Highway 80; also from Alton, Ill., to points in Tennessee; and from Vernona, Mo., to Knoxville, Tenn.

Interest: - Insofar as this protest is concerned, Holloway maintains terminals at Gadsden and Topeka. Its principal shipper is Goodyear Tire and Rubber Company and its road equipment (27 over-the-road tractors and 53 van trailers) were purchased especially to meet the needs of that shipper. In 1966 Holloway's operating revenue was $965,784 of which 71 percent was derived from the Goodyear account.

The traffic managers of the Goodyear mills at Cedartown, Rockmart and Cartersville, Ga., on Friday of each week give Holloway a schedule of pickups for the following week. At Gadsden pickup orders generally are placed in the afternoon prior to the requested pickup, but at times on much shorter notice. Holloway holds out second day service in both eastbound and westbound operations on truckload shipments. About 60 percent of the shipments are truckload. Less-than-truckload shipments are accumlated until 12,000 to 18,000 pounds are available for transportation. Holloway's shippers are aware of this practice and have made no objection to it.

Eastbound Holloway transports grain, grain products, feed, etc. The shippers of these products call in their requirements to the Topeka office from which the trucks are dispatched. The major portion of the eastbound backhaul is of flour from Kansas points to wholesalers and bakeries in Georgia and Alabama. Availability of equipment for this eastbound freight is dependent upon the westbound Goodyear shipments. In 1966 Holloway transported 2,550 shipments westbound and 1,800 eastbound. Six of the eastbound shippers who account for approximately 22 truckload shipments per week, appeared on behalf of the Holloway protest to urge the necessity of having Holloway's service available to them for the satisfactory movement of their products. They are completely satisfied with the service Holloway affords and they know of no other single-line service available to meet their needs. A considerable amount of their freight is comprised of agricultural commodities for which no certificate is necessary.

The Goodyear witness who supported the Bowman application for service to Kansas City and Topeka found the Holloway service satisfactory, but was fearful of what might happen if there was a change in ownership of Holloway. He admitted that if the Bowman application were granted it is likely he would divert 50 percent of the freight from Holloway to Bowman. All of the westbound and a large portion of the eastbound

affic of Holloway would be subject to diversion with the grant of the Bowman pplication.

ONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE (CONSOLIDATED)[1] AND AS OPERATOR OF SOUTHERN-PLAZA EXPRESS, INC. (SOUTHERN PLAZA) - MENLO PARK, CALIF.

Protest: - The Bowman application especially for service between the Southwest and astern areas such as between Houston, Fort Worth, Dallas and Kansas City in the outhwest area and Washington, Baltimore, Wilmington, Philadelphia, Newark, Paterson, South Plainfield and New York City in the eastern area and extending on nto Connecticut and Massachusetts.

Operations: - The Consolidated system maintains terminals at all of the above points except Washington and also at other points in Pennsylvania, New York, Connecticut and Massachusetts which are affected by this application. It operates as a general commodity carrier from coast to coast. In 1966 its operating revenue was just under $178 million with an operating ratio of 91.3 percent.

Interest - From its terminals in Texas, Oklahoma and at Fort Smith, Ark. (Southwest division), to its Atlantic division (which embraces its terminals in the New York City area, Philadelphia, Baltimore, Wilmington, Wilkes-Barre and York), Consolidated transported about 9.3 million pounds of freight during the first 4 months of 1967. Westbound from the Atlantic division to the Southwest division it transported 13.8 million pounds during the same period. Consolidated has established service standards for its operations. Between Houston, Dallas and Fort Worth, on the one hand, and, Baltimore, Wilmington, Philadelphia and the northern New Jersey points on the other, Consolidated holds out a five day service, and a six day service between those southwestern points and New York City or Washington, D. C. For the year 1966 however, its on time performance under these standards ranged from a low of 4.1 percent (Fort Smith to Newark) to a high of 58.9 percent (Philadelphia to Dallas).[2] This protestant is fearful that a grant of the Bowman application may result in a diversion of this Southwest-Atlantic division freight which is important to its system operations.

ILLINOIS-CALIFORNIA EXPRESS, INC. (ICX) - DENVER, COLO.

Protest: - The Red Ball and Strickland applications.

Operations: - ICX is a common carrier of general commodities operating over a network of routes which extend between Chicago, St. Louis and Dallas on the east and Los Angeles on the west, traversing and serving points in the States of Illinois, Iowa, Nebraska, Colorado, Texas, New Mexico, Arizona and California. Its authority between Dallas and Amarillo substantially duplicates that of Strickland and Red Ball; its authority also duplicates that of Red Ball in certain areas of New Mexico and

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[1] In corrected certificate No. MC-42487 (Sub-No. 744), issued January 20, 1971, pursuant to *Consolidated Freightways Corp. of Delaware—Control*, 109 M.C.C. 76 (1969). Consolidated acquired regular-route authority generally between Louisville, Ky., and Cincinnati and Dayton, Ohio, on the north, Winston-Salem and Charlotte, N.C., and Greenville and Columbia, S.C., on the east, Atlanta, Dalton, Columbus, and Macon, Ga., on the south, and Chattanooga, Tenn., on the west.

[2] Exhibit 1521 shows that ontime performance from Fort Smith to South Plainfield, N.J., was 2.0 percent during 1966, and from Kansas City, Mo., to Washington, D.C., it was 73.3 during this period.

Colorado. It operates 242 road tractors, 1,003 road trailers, and 1,015 local units and service vehicles. It maintains 76 terminals and stations throughout its system.

Interest: - ICX offers overnight service on less-than-truckload freight between Dallas, on the one hand, and, on the other, its direct service points in Texas as far west as Amarillo and Lubbock, and second morning delivery on direct service points in New Mexico and Colorado. It interlines freight at Dallas with ETMF, Mercury Freight, Gordons, Herrin, Transcon, Red Ball, Braswell, Jones, Roadway and Strickland. Its interline volume at Dallas with ETMF and Mercury Freight is sufficient to warrant operating through trailer service. ICX also has arrangements with ETMF and Akers for through service with joint rates to the Eastern Seaboard and southeastern territories served by Akers.

ICX solicits the freight of five shippers located at Littleton, Denver, Colorado Springs and Pueblo, Colo., and Amarillo, Tex., who support the Red Ball application, and participates in the transportation of a portion of it. Revenue from the freight it handles between the points and gateways it serves in Texas, Colorado and New Mexico and points and gateways in the South or Southeast which applicants seek authority to serve is important to ICX for the continued operation and maintenance of its service facilities. A new competitive single-line service by Red Ball and Strickland as here proposed in competition with ICX and its connections through the Dallas, Amarillo, and Chicago gateways may cause some diversion of this valuable traffic.

SOUTHWESTERN TRANSPORTATION COMPANY (SW TRANSP.) - TEXARKANA, TEX.

Protest: - All applications.

Operations: - SW Transp., a railroad affiliated motor carrier, is authorized insofar as this proceeding is involved to transport general commodities over routes in the States of Texas, Arkansas, Tennessee and Missouri extending between Dallas, Fort Worth, Waco and Shreveport on the south to Memphis on the east and St. Louis on the north, serving intermediate points including such points as Little Rock, Magnolia, Camden, Fordyce, Pine Bluff, Jonesboro, and Blytheville, Ark., and Tyler, Corsicana, Greenville and Jacksonville, Tex. It operates 108 road tractors, about 635 trailers of various types, and over 210 pieces of city and service equipment.

Interest: - SW Transp. handles most of its traffic moving between southwestern and southeastern points through its Memphis terminal. In December 1966 traffic representing $5,985 revenue was received from Bowman at Memphis and traffic representing $3,177 revenue was given to Bowman. In the same period traffic representing $2,575 revenue was received from Roadway and traffic representing $6,413 revenue was given to that carrier. SW Transp. restricts the handling of shipments of furniture to points on its own line because of difficulties it has experienced in interlining such freight with connecting carriers. It opposes these applications because it is of the opinion that it is able to perform adequate service in conjunction with its connections on freight moving between the southeast and southwest areas.

ALAMO EXPRESS, INC. (ALAMO) - SAN ANTONIO, TEX.

Protest: - Portions of the Bowman, Floyd & Beasley, Deaton, Baggett and Johnson applications.

Operations: - Alamo is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction

with connecting long-haul carriers. Its operations extend generally between the Galveston-Texas City-Houston area on the east and Brownsville, Laredo and San Antonio on the west. It operates 118 road tractors, 238 semitrailers of various kinds and 184 pieces of city equipment.

Interest: - Houston is the major interchange point on the east, and points within 15 miles of Houston have been served by Alamo for years. In addition, Texas City is a very important traffic producing point for Alamo. For example, in April 1967, Alamo originated 77 shipments weighing over 1.4 million pounds which produced a revenue for Alamo of $4,844. In addition Alamo delivers or originates much freight within 15 miles of Houston which it interlines at Houston with connecting carriers. Alamo is of the opinion that it is giving the public a reliable and expeditious service. It has large investments in equipment, terminals and other facilities which are not being operated to capacity and diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area.

CENTRAL FREIGHT LINES, INC. (CENTRAL) - WACO, TEX.

Protest: - The Deaton application and portions of the applications of Bowman, Johnson, Floyd & Beasley and Baggett.

Operations: - Central is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction with connecting long-haul carriers. Its routes extend generally between the Beaumont, Orange and Port Arthur area on the east, through the Houston-Galveston area to Brownsville on the south, and through central Texas to Wichita Falls and Denison on the north. It operates 418 tractors, 1,010 trailers of various types, 481 trucks, and 41 pieces of service equipment.

Interest: - Central interlines a considerable amount of traffic at such points as Houston and Dallas, much of which is moving to or from points on the routes of the carriers it protests. Competition from new single-line services as proposed by these applicants, particularly in connection with points within the 15 mile radius of Houston and Dallas and such points as Port Arthur, Beaumont, Orange, Texas City, Smiths Bluff, Greenville and Garland, may divert some of this freight from Central Freight. The carrier has a large investment in facilities and equipment which are not being used to capacity. It is the position of Central Freight that with its connections it can offer a more reliable and expeditious service responsive to the needs of the public than can the applicants, and that diversion of this important traffic will result in impairing the quality of its service.

RED ARROW FREIGHT LINES, INC. (RED ARROW) - SAN ANTONIO, TEX.

Protest: - The Deaton application and portions of the applications of Bowman, Floyd & Beasley and Baggett.

Operations: - Red Arrow is a common carrier of general commodities operating over routes wholly within the State of Texas extending between the Dallas and Fort Worth area and Houston, including points within 15 miles of each of these cities; and also between Houston and points within 15 miles, on the one hand, and, on the other, Orange, Beaumont, Texas City, Port Arthur and Smiths Bluff. It operates 118 tractors and 297 trailers in over-the-road service, and 114 trucks, 36 tractors, and 40 trailers in city equipment.

Interest: - Red Arrow interlines freight particularly through the Dallas-Fort Worth and Houston gateways including freight moving to and from points in the East and

Southeast served by the applicants it is protesting. Its position is substantially the same as that of Central Freight and Alamo.

EAGLE MOTOR LINES, INC. (EAGLE) - BIRMINGHAM, ALA.

Protest: - The Bowman and Floyd & Beasley applications.

Operations: - Eagle is an irregular route common carrier primarily of specific commodities operating over a large area of the United States. Over 95 percent of its shipments are in truckload quantities and 95 percent of the freight handled can be classified generally as iron and steel articles, pipe, or machinery. It operates about 336 tractors and 534 trailers including vans, flats, telescopic, converters, pole, lowboys, drop frames, I-beams, and refrigerated trailers. Approximately 80 percent of the tractors and 20 percent of the trailers are leased from owner-operators.

Eagle's authority which is in conflict with the protested applications embraces the transportation of general commodities from points in Georgia, Mississippi, and Tennessee to Birmingham and points within 10 miles thereof; iron and steel articles from Birmingham and points within 10 miles thereof to points in Georgia, Mississippi, Tennessee, Texas, Virginia and portions of Louisiana and Florida; contractors' equipment between Bessemer and points in Alabama within 100 miles thereof, on the one hand, and, on the other, points in Georgia, Mississippi, Tennessee and portions of Louisiana and Florida; cotton gin machinery and parts and veneer mill lathes from Birmingham to points in Texas; fiber pipe and iron and steel articles from various points in Alabama including Birmingham to points in Arkansas and Oklahoma; trailers from Birmingham and Haleyville, Ala., and Collins, Miss., to points in the United States and of the same commodities from the destination area to Birmingham.

Interest: - It is Eagle's position that even though the applicants it is protesting may limit their extension applications to certain specific points in Texas, Kansas, Missouri, Mississippi or Arkansas, they become new competitors to many other points by virtue of improving their interline capabilities through the new gateways. Accordingly, Eagle noted some 14 million pounds of freight (mostly iron and steel articles) handled by it during May 1967 producing a revenue of $94,000 which it considered to be subject to possible diversion should the applications of Bowman and Floyd & Beasley be granted.

T.I.M.E. FREIGHT, INC. (T.I.M.E.)[1] - LUBBOCK, TEX.

Protest: - All applications.

Operations: - T.I.M.E. is a common carrier carrier of general commodities operating over routes which extend between San Francisco and Los Angeles on the west, El Paso, Oklahoma City and Atlanta on the south, Kansas City, Chicago and Cincinnati on the north, and New York and Boston on the east. T.I.M.E.'s basic operations are (1) between Middle Atlantic and New England territory, on the one hand, and, on the other, the South, Midwest and West; (2) between the Midwest, on the one hand, and, on the other, the South and Southeast; and (3) between the South and Southeast, on the one hand, and, on the other, the Southwest and West.

[1] Pursuant to supplemental order of the Commission, division 3, in No. MC-F-9822, entered May 26, 1969, T.I.M.E. acquired authority in certificate No. MC-35320 (Sub-No. 109), issued May 8, 1970, to transport general commodities, with the usual exceptions, over regular routes between Tulsa, Muskogee, and Oklahoma City, Okla., on the one hand, and, on the other, San Antonio and Dallas, Tex. As indicated in appendix C, the name of this carrier has been changed.

It maintains 29 terminals at various key locations throughout its routes. It operates 513 road tractors, 1,304 road trailers, 412 city tractors, 376 city trailers, 206 straight trucks and 63 service vehicles. The only protective service offered is by portable heaters. In 1966 its operating revenue was over $57 million and its operating ratio 92.15 percent. Its average length of haul for all of its freight in March 1967 was 1,112 miles.

T.I.M.E. holds out to the public an overnight service on truckload and second day on less-than-truckload freight between Atlanta, on the one hand, and, on the other, Memphis, Little Rock, Springfield and Tulsa. From the eastern terminals such as Boston, New York, Philadelphia, Baltimore, York, Pa., to Memphis the holding out is second day on truckload and third day on less-than-truckload freight and that same service is also held out on the Atlanta to Oklahoma City freight. No evidence was presented as to actual performance under those schedules. Although authority to serve other points in Arkansas, Oklahoma and Missouri is held, T.I.M.E. serves only Little Rock and West Memphis in Arkansas, Oklahoma City and Tulsa in Oklahoma, and Springfield, St. Louis and Kansas City and Missouri, except for an occasional volume shipment. Freight destined to other points in those States which it is authorized to serve is interlined to other carriers for delivery.

Interest: - During the month of March 1967 it handled freight between its Atlanta terminal and other terminals here involved as follows:

Terminals	Number shipments	Pounds	Revenue
Atlanta to Memphis	2,185	1,537,247	$25,493.00
Memphis to Atlanta	1,576	1,397,890	19,623.29
	3,761	2,935,137	45,116.29
Atlanta to St. Louis	2,091	1,271,326	25,039.55
St. Louis to Atlanta	2,367	2,769,761	47,024.39
	4,458	4,041,087	72,063.94
Atlanta to Chicago	775	507,052	9,963.92
Chicago to Atlanta	1,185	1,054,277	23,794.45
	1,960	1,561,329	33,758.37
Atlanta to Springfield	503	258,574	6,566.74
Springfield to Atlanta	271	209,488	5,767.97
	774	468,062	12,334.71
Atlanta to Kansas City	1,560	744,460	21,929.70
Kansas City to Atlanta	1,027	845,687	21,629.28
	2,587	1,590,097	43,558.98
Atlanta to Tulsa	1,033	529,695	13,843.11
Tulsa to Atlanta	377	203,175	5,111.90
	1,410	732,870	18,955.01
Atlanta to Oklahoma City	2,374	1,181,055	32,862.56
Oklahoma City to Atlanta	588	713,702	17,843.84
	2,962	1,844,757	50,706.40
Atlanta to Little Rock	1,259	695,563	18,153.92
Atlanta to terminals west of Oklahoma City	5,306	4,109,805	224,836.04
Terminals west of Oklahoma City to Atlanta	6,475	3,821,068	229,803.27

During the month of March 1967, at Memphis T.I.M.E. interlined to Red Ball 4,097 shipments weighing over 3 million pounds producing revenue for Red Ball of $44,156. This freight moved primarily to points in Texas and Louisiana from points in the northern, eastern and southern areas. It gave Herrin 1,070 shipments of similar traffic weighing 540,385 pounds and producing revenue for Herrin of $10,103. Traffic interlined to Southwestern Transp., ETMF and Gordons moved mostly from midwestern and eastern points to Texas points. T.I.M.E. gave SW Transp. 1,311 shipments weighing 809,935 pounds and $15,121 revenue. Its interline to ETMF during this period was 579 shipments weighing 449,034 pounds and producing revenue of $8,861; to Gordons 807 shipments weighing 419,223 pounds and producing revenue of $5,852. Its interline to Jones goes to Missouri and Arkansas points primarily and amounted to 1,583 shipments weighing 987,617 pounds and producing revenue to Jones of $15,856. Some of this latter traffic came from western origins. Protestant is of the opinion that a substantial portion of this freight now interlined at Memphis would be subject to diversion if the applications were granted.

WATSON-WILSON TRANSPORTATION SYSTEM, INC.[1] (WATSON-WILSON) -

Protest: - Bowman application.

Operations: - Watson-Wilson is a motor common carrier of general commodities over regular and irregular routes in the States of California, Arizona, New Mexico, Colorado, Nebraska, Kansas, Iowa, Minnesota, Illinois, Tennessee, Georgia and South Carolina. It maintains 30 terminals throughout its system and operates in line-haul service 368 tractors and 631 trailers including vans, open tops and refrigerated units. Its operating revenue for 1966 was over $35 million. That of Yellow Transit was nearly $56 million.

Interest: - Watson-Wilson's interest concerns primarily service between Kansas City and Topeka, on the one hand, and, on the other, points in Tennessee, Georgia and South Carolina. Between its Kansas City terminal, on the one hand, and, on the other, its terminals in Chattanooga, Tenn., Rome, Atlanta and Augusta, Ga., and Greenville and Charleston, S. C., during the first four months of 1967 it transported 10,130 shipments weighing 13,561,657 pounds and producing revenue of $335,466. By far the largest portion of this freight moved between Atlanta and Kansas City with substantial tonnage also moving between Kansas City and the Chattanooga and Greenville terminals. During the same four month period Watson-Wilson found that it had transported freight for seven of the shippers who testified in support of the Bowman application from Kansas City to points in Tennessee, Georgia and South Carolina for delivery to consignees or interlined to other carriers. These totaled 230 shipments weighing 383,713 pounds and produced revenue of $12,729.

In a one week test period in March 1967, Watson-Wilson transported 269 shipments from its Atlanta terminal to Kansas City for delivery to consignees or connecting carriers. These shipments weighed 312,313 pounds and produced revenue of $8,875. Seventy-eight percent of the shipments were delivered within 3 days of the billing date at Atlanta and 96 percent within four days. During the same test period 84 shipments

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[1] At the time of the hearing, Watson-Wilson was controlled by Yellow Transit Freight Lines, Inc. Subsequently, the Commission approved merger of Watson-Wilson into Yellow Transit Freight Lines, Inc., 104 M.C.C. 737, which transaction was consummated December 9, 1968. The name of the surviving corporation has been changed to Yellow Freight System, Inc.

were transported from the Chattanooga terminal to Kansas City weighing 78,720 pounds and producing revenue of $2,123. Seventy-one percent of these shipments were delivered within three days from the Atlanta billing date and 93 percent within four days. From the Greenville terminal there were 42 shipments to Kansas City during the period weighing 29,792 pounds and producing revenue of $967. Forty-eight percent were delivered within three days and 86 percent within four days. During that period 17 shipments were handled from the Augusta terminal to Kansas City, 15 from the Rome terminal and 5 from the Charleston terminal. These 37 shipments weighed an aggregate of 75,491 pounds and produced revenue of $2,242. Thirty-eight percent were delivered within three days of the billing date and 89 percent within four days.

Bowman is one of Watson-Wilson's primary interline carriers in the southeastern area. The protestant is of the opinion that the granting of the Bowman application will jeopardize the traffic it now has between Kansas City and Topeka, on the one hand, and Atlanta and points in the southeastern area on the other.

TRANS-COLD EXPRESS, INC. (TRANS-COLD) - IRVING, TEX.

Protest: - All applications.

Operations: - Trans-Cold is a common carrier of specific commodities, primarily various kinds of food products, operating between numerous points and areas within the United States. Its general office is at Irving (Dallas), Tex., and it also maintains offices at Brownsville, Tex., Norwalk, Calif., Chicago, Ill., Wichita, Kans., Somerville, Mass., and Jersey City, N. J. It operates 21 pieces of city and service equipment, 153 road tractors and 176 road trailers. All trailers are mechanically refrigerated. It maintains refrigerated storage facilities at Irving and at Jersey City. The preponderance of the company's operation is between the Southwest and East, and from the Southwest to the Southwest. Its primary customers are large chain stores, warehouses, various of the larger foodstuffs manufacturers, and meatpackers.

Interest. - Trans-Cold transports substantial quantities of freight requiring protective service from the East to the Southwest, from the Southwest to the East, and from the Southwest to the Southeast (but not in the reverse direction) which it believes may be subject to diversion should these applications be granted. To a much lesser extent there is a possibility of some diversion of its freight moving between the East and West. During the month of May 1967, Trans-Cold transported 254 shipments weighing over 4 million pounds from points in New York, New Jersey, Ohio, Connecticut, Massachusetts and Pennsylvania primarily to points in Texas with some shipments going to points in Oklahoma, Arkansas, and Missouri. In the same period Trans-Cold transported 94 shipments weighing about 2.5 million pounds from the Southwest (all from Texas except one shipment from Oklahoma and one from Arkansas) to points in New York, New Jersey, Maryland, Massachusetts, Connecticut, Pennsylvania and Virginia. During the same period 70 shipments weighing about 2.3 million pounds were transported from points in Texas and New Mexico to points in Alabama, Florida, Georgia, and the Carolinas. From eastern origins to western destinations (Arizona, Utah, Oregon and Washington) in this period Trans-Cold transported 114 shipments weighing 1.4 million pounds.

The great majority of the freight handled by Trans-Cold is in truckload quantities. At Irving, however, it does accumulate shipments of less-than-truckload quantities from Texas origins, and approximately 3 times a week dispatches loads containing such less-than-truckload shipments for southeast and eastern destinations.

Trans-Cold opposes the granting of any authority that may result in a diversion of any of the above freight from its operations.

MISSOURI PACIFIC RAILROAD COMPANY (MOPAC) - THE TEXAS & PACIFIC RAILWAY COMPANY (T&P) - MISSOURI PACIFIC TRUCK LINES, INC. (MPTL) - THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY (T&PMT) -

Protest: All applications except Roadway and Herrin.

Operations: - MoPac controls T&P and they are being jointly operated pursuant to authority of this Commission. Their respective motor carrier affiliates are wholly owned subsidiaries of the parent rail companies. These motor carriers operate over regular routes in the States of Texas, Arkansas, Louisiana, Mississippi, Tennessee, Missouri, Kansas and Nebraska, paralleling the railroad operations to a considerable extent. They operate regular schedules over the system which embraces approximately 17,000 miles of routes, serving approximately 1,700 cities, towns and villages. They maintain major terminals at 30 cities in Texas, 15 in Arkansas, 12 in Louisiana and 11 in Kansas, and together operate about 456 tractors, 542 trailers, and 220 city units.

Interest: - MPTL and T&PMT conduct substantial operations over their routes serving the points authorized, and the traffic generated at the points served locally is vitally important to continuation of their operations. They interline freight with other carriers including some of the applicants. During May 1967, they received 90,508 pounds of freight from Bowman at Memphis producing revenue of $2,122. In the same month they interlined to Bowman 156,251 pounds of freight for a revenue of $1,613. They also interlined to Deaton at Memphis 176 pounds of freight with a revenue of $2.43 during the month. During this same period at New Orleans they interlined freight with Deaton, Baggett, Johnson and Strickland aggregating 475,202 pounds and producing revenue of $4,912.

These four protestants are of the opinion that the granting of these applications will not result in the development of any new traffic, but will serve only to dilute traffic and revenue of existing carriers operating in this particular area, and make it more difficult for them to give an adequate and dependable service to the public. These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them.

RED LINE TRANSFER & STORAGE COMPANY, INC. (RED LINE) - PINE BLUFF, ARK.

Protest: - The Red Ball, Strickland, Bowman and Jones applications.

Operations: - Red Line is a motor common carrier of general commodities operating daily schedules over regular routes out of Memphis, Tenn., Little Rock, Ark., and Greenville, Miss., into all of southeastern Arkansas, and to Monroe and Bastrop, La., with return schedules the same day, but restricted against service between Memphis and Little Rock or between Memphis and Greenville. It maintains 10 terminals on its routes and two call stations. Red Line operates 33 tractors, 60 trailers and 38 pickup trucks. Its operating revenue in 1965 was $1.5 million and its operating ratio was 99.1 percent. It interlines freight at Little Rock, Memphis, Pine Bluff, Crossett, Monroe, and Greenville, including interline with the applicants here protested at one or more of the points.

Interest: - During the months of October, November and December, 1966, Red Line received in interline service at Memphis for delivery at points on its routes about 1,000 shipments which originated at or moved through Atlanta or Birmingham and which

produced revenue for Red Line of approximately $8,000. Of these shipments 53 were received from Bowman aggregating 34,868 pounds.

During a three day period (June 6, 7 and 8, 1967) Red Line interlined with Strickland at Little Rock 42 shipments weighing 118,377 pounds and producing revenue for Red Line of $726 and for Strickland of $1,550. Red Line has interlined such freight with Strickland at Little Rock for the past 10 years.

During a one week period May 1 through May 8, 1967, Red Line originated 44 shipments at Memphis which it transported to Lake Village, Ark., producing total revenue of $429. No interline freight is included. This is a daily operation, the truck being routed through Pine Bluff to pick up intrastate shipments from that area going to Lake Village inasmuch as there is insufficient freight for a direct schedule from Memphis. In the same period 39 interstate shipments were originated by Red Line at Lake Village producing a revenue of $164. It also orginated 27 shipments at Greenville, Miss., producing a revenue of $205. During the same week Red Line originated 84 interstate shipments as Crossett, Ark., which were interlined to connecting carriers or delivered by Red Line at Memphis, Little Rock or Monroe and which produced revenues for Red Line of $2,597.

Red Line is of the opinion that a diversion of any of this freight would jeopardize its ability to continue a daily service between its terminal points and serving the intermediate and off-route points. Red Line's present competition for the Lake Village traffic are ABF, Campbell Sixty-Six, Atlas Transit, and MoPac.

GORDONS TRANSPORTS, INC. (GORDONS) - MEMPHIS, TENN.

Protest: - All applications.

Operations: - Gordons is primarily a regular route general commodity carrier with authorized routes extending between Chicago and St. Louis on the north, New Orleans, Gulfport and Mobile on the south, Atlanta, Ga., on the east, and Dallas, Fort Worth, Fort Smith and Kansas City on the west. It is authorized to conduct single-line operations between Atlanta, Ga., and Birmingham, Huntsville and Decatur, Ala., on the one hand, and, on the other, Memphis, Kansas City, St. Louis, Chicago, Dallas, Fort Worth, Little Rock, Fort Smith and the Mississippi points of Greenville, Greenwoood, Cleveland and Indianola; also between Chicago and St. Louis, on the one hand, and, on the other, Jackson and Gulfport, Miss., and Baton Rouge, New Orleans and other Louisiana points. It maintains 17 company terminals and 5 agency terminals throughout its system. It operates 309 tractors, 815 trailers of various types, and 812 city equipment units. In 1966 its operating revenue was about $31.4 million with an operating ratio of 91.8 percent.

Gordons is predominantly a less-than-truckload carrier. In 1966, it transported 1,674,816 less-than-truckload shipments and 26,758 truckload shipments. Of the less-than-truckload shipments handled, 40.1 percent were minimum rated and 71.8 percent weighed less than 500 pounds. The less-than-truckload shipments accounted for 72.6 percent of its operating revenue. 68.8 percent of the total shipments were transported in joint-line service producing 55.2 percent of the revenue. Gordons interlines freight with short-line operators at its major terminals which freight originates at or is terminated at numerous points Gordons is authorized to serve. This is especially true where the volume of freight fails to warrant daily schedules, and accumulation of an adequate volume would result in delay in handling the freight.

In like manner, Gordons may operate a certain number of schedules between terminals daily, but if there is insufficient freight to warrant dispatching one of the

schedules the freight may be held a day for additional freight to round out the trailer load. In this connection Gordons considers traffic volume as the key to establishing service standards. Where there is sufficient freight to load a through trailer to destination the freight moves faster than if loaded to a break-bulk point. In some instances it is advantageous both from the standpoint of economy and service to use every-other-day through schedules rather than daily schedules over a break-bulk point.

Gordons has established certain service standards which it holds out to the public. It has found that there are very few complaints regarding service if freight is delivered not more than one day beyond the service standard. These standards as pertinent to operations here considered include second day service from Atlanta to Dallas, and from Chicago and St. Louis to Atlanta and Birminghma; third day service from Kansas City to Atlanta and Birmingham, from Birmingham to Dallas, and from Chicago to Baton Rouge, New Orleans, other Louisiana points, Gulfport and Mobile. An examination of Gordons' records for a one week test period in May 1966, covering 5,694 shipments handled between the above points[1] disclosed "on time" performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard.

The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. An analysis of its traffic for the year 1966 discloses that at its Atlanta terminal 89.6 percent of the outbound and 95.1 percent of the inbound freight is involved in these proceedings, and is subject to diversion if these applications are granted; at Baton Rouge 83.5 percent of the outbound and 81.2 percent of the inbound freight is involved; at Birmingham 98 percent of the outbound and 98.5 percent of the inbound freight in involved; at Dallas it is 24.8 percent of the outbound and 43.7 percent of the inbound freight; at Gulfport 89.7 percent of the outbound and 90.6 percent of the inbound freight; at Jackson 59 percent of the outbound and 54.4 percent of the inbound freight is involved; at Kansas City 42.1 percent of the outbound and 44.3 percent of the inbound freight is involved; at Mobile 86 percent of the outbound and 91.2 percent of the inbound is involved; at New Orleans 69.5 percent of the outbound and 87.7 percent of the inbound freight is involved.

Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. Gordons serves many of the shippers who testified in these proceedings on behalf of certain of the applicants. Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles a total of 1,045,560 miles, much of it between points involved in these applications.

SUPPORTING GORDONS' PROTEST

Five motor carriers who were not themselves protestants in these proceedings testified in support of Gordons' protest. Ellis Trucking Company, Inc., of Indianapolis, Ind., operates as a common carrier of general commodities over regular routes extend-

[1]Excludes bills with no delivery date, and those involving unusual circumstances such as "will call" shipments, C.O.D.'s or order notify shipments, and redeliveries.

ing between Memphis, on the one hand, and, on the other, numerous points in Kentucky, Indiana, Ohio and Michigan, with terminals at Memphis, Tenn., Cincinnati and Dyaton, Ohio, Indianapolis, Anderson, Marion, and Fort Wayne, Ind., Detroit, Pontiac, Flint, Saginaw, Lansing and Jackson, Mich. Its operating revenue for 1966 was over $12 million. Roadway serves all the above points. At Memphis Ellis interlines primarily with Gordons, Braswell and Herrin. In May 1967 Ellis from the above terminals interlined at Memphis 1,573 shipments weighing over 2 million pounds destined to New Orleans, Baton Rouge, Mobile, Gulfport and Biloxi. All of this freight would be subject to diversion to the proposed Roadway single-line service.

Southern Forwarding Company of Memphis is a motor common carrier of general commodities operating over regular routes in Tennessee and Kentucky primarily between Louisville and Memphis via Nashville. Its operating revenue for 1966 was over $1.7 million. In January 1967 Southern Forwarding handled 40 shipments weighing 121,860 pounds from Louisville destined to New Orleans and 60 shipments weighing 46,494 pounds from Louisville destined to Baton Rouge which were interlined at Memphis. This traffic would be subject to diversion to Roadway. Also subject to diversion to Bowman would be freight from Nashville to New Orleans and Baton Rouge.

Mid-South Transports, Inc., of Memphis, is a motor common carrier of general commodities in the State of Tennessee operating generally between Memphis and Nashville and between Memphis and Clarksville serving various intermediate points. Its operating revenue for 1966 was approximately $2.5 million. In the first three months of 1967 Mid-South originated 121 shipments weighing 296,141 pounds at Clarksville, Tenn., destined to points proposed to be served by Roadway and during the same period 94 shipments weighing 40,610 pounds at Nashville destined to the same Gulf Coast area. This freight was interlined to connecting carriers at Memphis. The two shippers of this freight testified in support of the Roadway application and the freight would be subject to diversion by that carrier. Similarly, during the period from October 10 to October 22, 1966, Mid-South participated in the movement of 121 shipments weighing 117,295 pounds between points in Tennessee and Kentucky including Nashville and Clarksville, on the one hand, and, on the other, points in Louisiana and Mississippi which also would be subject to diversion.

Wilkerson Freight Lines, Inc., of Moss Point, Miss., is a common carrier of general commodities operating over a regular route between Pascagoula, Miss., and Mobile, Ala., serving all intermediate points and the off-route point of Escatawpa. It operates 9 tractors and 16 trailers. Less-than-truckload traffic is handled on its own equipment. Truckload freight for the International Paper Company plant at Moss Point, Miss., is handled in conjunction with Bowman, Gordons, Cole and Mercury Freight using the connecting line's trailer with the interline being made at Mobile. Forty-five to 60 percent of its traffic is handled for International Paper Company. That company testified on behalf of the Johnson and Bowman applications.

Atlas Transit, Inc., of Little Rock, Ark., is a motor common carrier of general commodities operating over a network of regular routes in Arkansas between West Memphis, Little Rock, El Dorado, Texarkana, Arkadelphia, Pine Bluff, Hot Springs, Conway, Fort Smith, Fayetteville and Springdale. It maintains 15 terminals throughout its routes and operates 19 road tractors, 77 road trailers and 28 city pickup vans. On freight moving to or from Memphis Atlas purportedly interlines with Powell Truck Lines on a through unit and one carrier (for rate purposes) basis. Jones, Herrin, Strickland and Red Ball all operate in Arkansas and Bowman proposes operation in Arkansas. Atlas handles a substantial amount of interstate freight through interline

especially at West Memphis and Little Rock. This freight is essential to the continued operation of various terminals which provide a necessary service to many small cities and communities in Arkansas. A shift in the interline point from Memphis to Little Rock would either divert freight entirely from Atlas or substantially reduce its portion of the operating revenue.

MERCURY MOTORS INCORPORATED (MERCURY MOTORS) - FORT SMITH, ARK.

Protest: - The Bowman application; (also appeared as a witness for Gordons in support of their protest of the Jones, Red Ball and Strickland applications).

Operations: - Mercury Motors is a common carrier of general commodities operating over regular routes between Memphis and Fort Smith by way of Little Rock, and beween Memphis and Snow Lake, serving intermediate points and certain off-route points; also over irregular routes between Memphis on the one hand, and points in the west central portion of Arkansas on the other. Its 1966 operating revenue was over $2.7 million. It maintains terminals at Memphis, Fort Smith, Little Rock and Helena.

Interest: - During 1966 Mercury Motors received from Bowman in interline service at Memphis 1,408 shipments weighing 1,258,021 pounds and producing revenue for Mercury Motors of $14,228. During the same period it interlined to Bowman at Memphis 231 shipments weighing 1,079,150 pounds and producing revenue for Mercury Motors of $8,764. This freight is subject to diversion to Bowman should the Bowman application be granted.

AKERS MOTOR LINES, INC. (AKERS) - GASTONIA, N. C.

Protest: - All applications.

Operations: - Akers is a common carrier of general commodities operating over an extensive network of routes between points in Georgia, South Carolina, North Carolina and on up the East Coast through Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. It maintains terminal facilities at 85 cities and operates 183 trucks, 552 tractors, and 1,102 trailers of various types.

Interest: - Interline traffic is a vital part of the Akers operation and any diversion of such freight from its lines by virtue of these applications will be detrimental to the carrier and impair the quality of service it is able to give to the public. Akers restricts the application of through rates to not more than a 2-line haul on truckloads and a 3-line haul on less-than-truckload freight, and in the latter instance only when Akers is the intermediate carrier.

MERCURY FREIGHT LINES, INC. (MERCURY FREIGHT) - MOBILE, ALA.

Protest: - All applications.

Operations: - Mercury Freight is a common carrier of general commodities operating between Birmingham on the north, Mobile and Pensacola on the south, Beaumont, Houston, Dallas and Fort Worth on the west. By certificate dated May 24, 1968, in No. MC-113528 (Sub-No. 12), Mercury Freight is authorized to serve as intermediate and off-route points Baton Rouge, and points within 15 miles thereof, Lake Charles and points within 15 miles thereof, Bay Minette and Jackson, Ala., and Picayune, Miss., and the NASA test site near there. It maintains terminals at Birmingham, Selma, Mobile, Pensacola, Dallas, Fort Worth, Beaumont and Houston. It operates 82 tractors, 168 trailers and 48 pickup trucks. Its 1966 operating revenue was over $4.8 million. In that year it handled 267,109 less-than-truckload shipments and 8,152

truckloads. In 1966, 20 percent of Mercury Freight's total tonnage was local to its line, 66 percent was interline freight either originating or terminating on its lines, and 14 percent was interline freight where Mercury Freight was a bridge carrier. Thus, 80 percent of its freight is interline, including such service with some of the applicants.

Mercury Freight holds out to the public next day delivery between Birmingham and Mobile and between Birmingham and Pensacola; second day service between Birmingham and Houston, Birmingham and Dallas, Mobile and Houston and Mobile and Dallas. Its on time performance under those schedules as determined by records of 7,885 shipments covering a number of one week periods during 1966 ranges from a low of 76.4 percent to a high of 93.8 percent. It also holds out a second day joint-line service between Atlanta and Houston or Dallas.* Mercury Freight is not operating to capacity and is in need of additional freight. In the period from July to December 1966, Mercury Freight dispatched 86 empty trailers from its Pensacola terminal for lack of outbound freight. Similarly, it dispatched 127 empty trailers from Houston for lack of traffic in that six month period. In 1966, 99.2 percent of the individual shipments handled by Mercury Freight were free from any claim for loss or damage and from a revenue standpoint the claim ratio of the company was 1 percent.

Interest: - Aside from added competition with its extensive joint-line services which these applicants propose, Mercury Freight's single-line service will be duplicated by one or more of these applications. For example, six of the applicants proposed to duplicate Mercury Freight's single-line service between Birmingham and Dallas, Birmingham and Houston, Birmingham and Beaumont, and Birmingham and Fort Worth. Between Mobile and Dallas, Mobile and Houston, Mobile and Beaumont and Mobile and Fort Worth, four of the applicants propose single-line service duplicating that of Mercury Freight. Between Pensacola and Dallas, Pensacola and Houston, Pensacola and Beaumont, Pensacola and Fort Worth, two applicants proposed single-line service duplicating that of Mercury Freight. And between Selma, on the one hand, and, on the other, Dallas, Houston, Fort Worth and Beaumont, one of the applicants is proposing a new single-line service duplicating that of Mercury Freight.

As previously mentioned Mercury Freight interlines substantial traffic with several of the applicants. In 1966 Mercury Freight interlined to Roadway at Birmingham 1,494 shipments weighing over 2.4 million pounds moving to points in the Roadway system, and received from Roadway 7,588 shipments weighing over 4.9 million pounds. It interlined to Bowman at Birmingham 3,692 shipments weighing over 7.3 million pounds and received from Bowman 2,293 shipments weighing 7.2 million pounds. It interlined to Johnson at Mobile 194 shipments weighing 414,498 pounds and received from Johnson 2,119 shipments weighing 1.6 million pounds. Mercury Freight gave Baggett at Birmingham 4,006 shipments weighing over 4 million pounds and received from Baggett 1,464 shipments weighing over 2 million pounds. It gave Floyd & Beasley 141 shipments weighing 76,904 pounds and received from Floyd & Beasley 2,985 shipments weighing over 1.7 million pounds. It interlined to Deaton for the year 935 shipments weighing over 1 million pounds and received from Deaton 866 shipments weighing 514,165 pounds. It gave Red Ball at Mobile 326 shipments weighing 411,909 pounds and received from Red Ball 43 shipments weighing 79,613 pounds. This freight totaling for the year 1966, 17,358 shipments weighing over 18 million pounds is subject to diversion. Mercury Freight has handled the freight of at

*In No. MC-F-9918, *Mercury Freight Lines, Inc.—Purchase (Portion)—Sam N. Cole* (not printed), decided April 11, 1969, Mercury Freight was authorized to acquire by purchase operating rights extending its authority between Birmingham and Atlanta.

least 57 of the witnesses testifying in this proceeding. The witness for Mercury Freight also noted that for 100 of the witnesses testifying on behalf of certain of the applicants who ship or receive freight at points within Mercury Freight territory, a check of its records for periods ranging from six months to a year during 1966 failed to disclose that any of them tendered a shipment to Mercury Freight.

HOWARD HALL COMPANY, INC. (HOWARD HALL) - BIRMINGHAM, ALA.

Protest: - The Bowman application.

Operations: - Howard Hall is a motor common carrier of general commodities operating over irregular routes between Birmingham and points within 65 miles thereof and Montgomery, Ala., on the one hand, and, on the other, points in Georgia south of U. S. Highway 80 and those in Florida north of a line extending from Clearwater through Tampa to the East Coast. It maintains terminals at Birmingham, Jacksonville, Orlando, Pensacola and Tampa from which the surrounding areas are served by peddle runs. Pickup and delivery service is performed for Howard Hall by cartage agents at Daytona Beach, Gainesville, Lake City, Melbourne, Ocala, Panama City, and Tallahassee, Fla., and Anniston, Gadsden, Montgomery, and Tuscaloosa, Al. The company operates 187 trailers of various types, 41 tractors and 27 trucks used in pickup and delivery work, and 64 road tractors. In 1966 it transported 170,288 less-than-truckload shipments and 10,172 truckload shipments and its operating revenue was over $3.7 million.

Interest: - In a 12-month period (July 1, 1966-June 30, 1967) Howard Hall's operation between Birmingham and Pensacola produced some $405,000 operating revenue or approximately 10 percent of its total operating revenue. It considers this freight to be subject to diversion by the proposed new Bowman service which will eliminate the circuity involved in its present authority to perform such service. In addition, Bowman is proposing a new service to many points now served by carriers with which Howard Hall interlines freight at Birmingham. This freight also would be subject to diversion to the proposed new single-line Bowman service.[1]

WEST BROTHERS, INC. (WEST) - HATTIESBURG, MISS.

Protest: - The Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman and Johnson applications.

Operations: - West is a motor common carrier of general commodities operating primarily over regular routes extending between Birmingham, Montgomery, and Mobile, Ala., on the east, New Orleans on the south, and Memphis on the north, the latter point being subject to certain restrictions. Its routes are concentrated in the southern half of Mississippi, and include among its 167 service points in Mississippi, Alabama, and Louisiana such major cities as Jackson, Hattiesburg, Laurel, McComb, Brookhaven, Biloxi, Gulfport, and Pascagoula, Miss., Birmingham, Montgomery, and Mobile, Ala., and New Orleans and surrounding points in Louisiana.[2] It operates 14 terminals within this area. In 1966 its operating revenue was over $6 million. In its

[1] Through its purchase of a portion of the operating rights of Alabama Highway Express, Inc., No. MC-F-9921, consummated August 15, 1968, Bowman now holds operating authority substantially duplicating that of Howard Hall, thus eliminating the basis of this protest.

[2] Subsequent to this hearing, West has received authority to extend its operations to Natchez, Miss., and Baton Rouge, La., subject to certain restrictions. Also subsequent to this hearing, applicant Roadway has acquired control of West. As indicated in appendix C, the name of this carrier has been changed.

business West operates 100 road tractors, 298 trailers, and 123 pieces of city equipment.

Interest: - Of the 167 towns that are served directly by West, only 58 will not be affected by these applications and those are primarily very small communities, the total population of which aggregates only 59,516. Interline freight is an important segment of West's operations and a considerable amount of interline traffic is handled with these applicants. For example, in a two week period in October 1966, West received over 1.9 million pounds of freight from the 7 applicants it is protesting which it considers subject to diversion. During the first six months of 1967, 53.8 percent of all West's traffic was interlined and 46.2 percent was local to its own lines. Of the interline freight it handles West is of the opinion that from 85 to 90 percent is subject to diversion by these applications. West believes it is rendering a satisfactory and essential service to the public. In a one week period in October 1966, West handled some 6,699 shipments which purportedly would be affected by one or more of these applications. These shipments originated or were interchanged at New Orleans, Jackson, Mobile, Gulfport, Hattiesburg, Laurel, Meridian, Pascagoula, Birmingham, Memphis and Montgomery. 49.3 percent of the shipments were delivered to the consignees or to connecting carriers within one day and 93.7 percent within two days. Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations.

DEATON, INC. (DEATON) - BIRMINGHAM, ALA.

Protest: - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

Operations: - See under applicants' evidence in the attached report.

Specifically involved are Deaton's operations as a common carrier of general commodities between Atlanta and Birmingham and points within 65 miles of Birmingham, on the one hand, and, on the other, Memphis, New Orleans, and all points in Mississippi; also 27 grants of specific commodities authority. Deaton handles both truckload and less-than-truckload freight. Being an irregular route operator it holds out no firm commitment of scheduled service but informs shippers that normally shipments originating at Atlanta or Birmingham will be delivered in Jackson in the next or second day service.

Interest: - Deaton's operations conducted from its terminals at Anniston, Birmingham, Mobile, Atlanta, Columbus, Greenville, Jackson, Natchez, Vicksburg, Memphis and New Orleans are affected by the applications protested. Eight of these terminal operations are conducted by cartage agents. During two one week periods (one in February 1966 and one in March 1967) Deaton billed at the above terminals an aggregate of over 43 million pounds of freight producing revenues for Deaton of $311,242 (Vicksburg terminal was limited to the 1967 period inasmuch as it was only opened early in 1967). A large portion of this freight would be subject to diversion to one or more of the applicants. Deaton often interlines less-than-truckload freight destined to points in Mississippi which it is authorized to serve if the volume of such traffic does not warrant operation. The volume of traffic from Atlanta and Birmingham to New Orleans and points in Mississppi is three times that in the reverse direction. Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations.

FLOYD & BEASLEY TRANSFER COMPANY, INC. (FLOYD & BEASLEY) - SYCAMORE, ALA

Protest: - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

Operations: - Floyd & Beasley is a regular and irregular route common carrier of general and specific commodities—the latter being predominantly textile machinery and textile products—in the States of Alabama, Georgia, South Carolina, and Tennessee. Its authority to transport general commodities includes transportation from Atlanta, Ga., Chattanooga, Tenn., and all points in South Carolina to Birmingham, Ala. The authority to transport textile products includes service from 54 Alabama points to points in Alabama, Tennessee, Georgia, and South Carolina.

Floyd & Beasley is primarily a common carrier of textile products, materials and supplies operating over irregular routes (79 percent of its business). It also is a common carrier of general commodities from points in South Carolina, Atlanta and Chattanooga to Birmingham as well as to certain other Alabama points. Its operating revenue for 1967 was over $3.7 million.

Interest: - Floyd & Beasley interlines substantial tonnage particularly at Birnigham. On shipments destined to Mississippi, Louisiana, Texas, Arkansas, Oklahoma, Missouri and points beyond, Floyd & Beasley is fearful that its present interline traffic may be diverted to the applicants who would transport the shipments to destinations or to interline points nearer the destinations. Any diversion of its present traffic will seriously affect its financial stability.

BAGGETT TRANSPORTATION COMPANY (BAGGETT) - BIRMINGHAM, ALA

Protest: - Herrin, Roadway, Red Ball, Strickland, Bowman and Jones applications.

Operations: - See under applicants' evidence in the attached report.

Baggett maintains terminals at Atlanta, Columbus, Rome, Anniston, Birmingham, Decatur, Gadsden, Huntsville, Mobile, Montgomery, Opelika, Ozark, Selma, Sylacauga, Tri Cities, Tuscaloosa, Union Springs, Pensacola, New Orleans, Gulfport and Chattanooga. Baggett conducts single-line operations between all of these terminal points and serves intermediate points. It is predominantly a delivery or distribution carrier for the long haul carriers serving Atlanta, Chattanooga, Birmingham and New Orleans. Ninety-five percent of its traffic is less-than-truckload.

Interest: - During the month of May 1967, Baggett handled between the above terminals 55,623 shipments weighing over 55 million pounds and producing a revenue of $564,217. Of these shipments 26,896 were interline shipments weighing over 26.7 million pounds and producing a revenue of $219,009. One or more of the applicants protested conflict with Baggett's operations to some extent, including a number which would conflict with its explosive operations authorized in some 44 States. The extent of the possible diversion was not computed, but the proposed additional competition is considered to be substantial.

GEORGIA-FLORIDA-ALABAMA TRANSPORTATION CO. INC. (GFA) - DOTHAN, ALA.

Protest: - Herrin, Roadway, Red Ball, Floyd & Beasley, Strickland, and Baggett applications.*

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*Protest to the Bowman application withdrawn by petition dated September 30, 1968. GFA, in *Georgia-Florida-Alabama Transp. Co. Extension*, 110 M.C.C. 892 (1969), was granted regular-route, general-commodity authority generally over a network of routes extending between Pensacola, Fla., and Mobile, Ala., on the one hand, and, on the other, Jackson, Hattiesburg, Laurel, and Meridian, Miss. The certificate authorizing such operations, No. MC-61788 (Sub-No. 25), was issued June 2, 1971.

Operations: - GFA is a common carrier of general commodities operating over regular routes between Atlanta on the north and Pensacola and Mobile on the south serving intermediate points; and operating over irregular routes between points in Mississippi, Alabama and Florida within 75 miles of Bay Minette, Ala. It maintains terminals at Dothan, Andalusia, Atlanta, Pensacola, and mobile and agency stations at Fort Walton Beach, Pascagoula and Eufala. It operates 73 tractors, 162 trailers and 52 pickups. It interlines freight with 84 connecting carriers at Atlanta, Andalusia, Dothan, Mobile, Crestview and Pensacola, including seven of the applicants.

Interest: - A substantial amount of the GFA traffic may be subject to diversion by these applications. For example, on May 15, 1967, GFA transported 427 shipments weighing a total of 296,393 pounds between various points on its routes all of which would be subject to diversion if these applications were granted. The record shows that GFA delivered 83.1 percent of these shipments the first day and 98.3 percent by the second day. A similar tabulation for May 19, 1967, shows a total of 440 shipments weighing 222,511 pounds subject to diversion. 88.5 percent of those were delivered the first day and 98.3 percent by the second day.

GFA serves both International Paper Company and Ingalls Shipbuilding Company at Moss Point, Miss. Normally International Paper Company requires through trailer service for its truckload shipments which GFA provides in conjunction with its connecting carriers. GFA also serves Armstrong Cork Company at Pensacola, Fla., which company requires through trailer service in connection with its truckload shipments. Much of this traffic is handled in conjunction with Roadway Express as the interlining carrier at Atlanta. In a 3-month period GFA handled 104 shipments weighing over 2.3 million pounds for Armstrong Cork Company which were interlined at Atlanta. Seventy-one percent was delivered to the interlining carrier the first day and 91 percent by the second day. GFA's interline with Roadway at Atlanta is an important segment of its business. In the 2-month period of September and October 1966, GFA received from Roadway at Atlanta 292 shipments destined to points on its routes for delivery or interline. These shipments weighed 260,076 pounds. Fifty-four percent were delivered the first day and 89 percent by the second day. GFA is not using its equipment to capacity. It is of the opinion that it is performing an adequate service, and believes that diversion of its traffic that may result from a grant of these applications will seriously impair its operations and services.

PILOT FREIGHT CARRIERS, INC. (PILOT) - WINSTON-SALEM, N. C.

Protest: - Roadway and Bowman applications.

Operations: - Pilot is a common carrier of general commodities and various specific commodities operating in the States of Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Ohio and District of Columbia. It maintains 32 terminals throughout that territory. It operates 455 tractors, 917 trailers and 152 straight trucks. Its operating revenue in 1966 was over $26 million.

Interest: - Pilot participates in the transportation of freight between points in the above area and points in the Gulf Coast and Southwestern area proposed to be served by Roadway and Bowman. Atlanta is Pilot's primary gateway point for interchange of such traffic, with the gateways of Fort Oglethorpe and Savannah, Ga., Greenville, S. C., and Charlotte, N. C., handling lesser amounts of traffic. In 1966 Pilot received from interlining carriers at these terminals over 43 million pounds of freight and interlined to other carriers over 47.7 million pounds. This included interlining with four of the applicants, namely, Baggett, Deaton, Herrin and Johnson. Of the other 10

carriers with which Pilot interlined at these points, nine are protestants in these proceedings.

Pilot is not operating to capacity and in fact, it has an imbalance of freight at Atlanta to the extent of requiring operation of about 20 empty vehicles weekly out of that point. A diversion of freight will be detrimental to Pilot's operations.

THE MASON AND DIXON LINES INCORPORATED (MASON & DIXON) - KINGSPORT, TENN

Protest: - The Bowman application.

Operations: - Mason & Dixon is a common carrier of general commodities operating over routes extending between Chicago and Memphis on the west, Birmingham and Atlanta on the south, and Scranton and the New York City area on the north and east. It maintains some 30 terminals throughout this area and operates 187 road tractors, 1,244 trailers, and 246 pickup units. Its operating revenue for 1966 was over $39 million.

Interest: - Mason & Dixon handles a large amount of interline freight moving to or from points in Arkansas, Texas, Oklahoma and Mississippi, on the one hand, and, on the other, points on its routes. During the first 24 weeks (6 accounting periods) in 1967, Mason & Dixon transported between its northeast area and the southwestern States as above noted 32,309 shipments weighing 53.4 million pounds and producing revenue of over $1 million. In the same period between the south and southeastern points and the southwestern area it transported 3,986 shipments weighing over 5 million pounds producing revenue of $71,109. Its transcontinental traffic during this period moving between the eastern area and the west coast area amounted to 5,164 shipments weighing about 6.5 million pounds producing revenue of $94,983. A grant of the Bowman application will subject a very substantial portion of this traffic to diversion.

GEORGIA HIGHWAY EXPRESS, INC. (GHE) - ATLANTA, GA.

Protest: - The Herrin, Red Ball, Strickland, Baggett, Bowman and Jones applications.

Operation: - GHE is a common carrier of general commodities operating over both regular and irregular routes in Alabama and Georgia and over regular routes in eastern Tennessee. It maintains terminals at 20 points in Georgia, 10 in Alabama and 3 in Tennessee. GHE operates 280 tractors, 788 trailers and 198 pickup units. Its operating revenue for 1966 was over $15.7 million.

Interest: - GHE fears that granting of these applications will result in diversion of interline traffic it is now handling to or from the territory for which applicants are seeking authority. GHE maintains interline facilities to handle this traffic at Atlanta, Birmingham, Mobile and Chattanooga.

CAMPBELL SIXTY-SIX EXPRESS, INC. (CAMPBELL SIXTY-SIX) - SPRINGFIELD, MO.

Protest: - All applications except Bowman's.[10]

Operations: - Campbell Sixty-Six is a common carrier of general commodities operating over routes extending between Chicago on the north, Kansas City and Tulsa on the west, Birmingham and Mobile on the east, and New Orleans and Baton Rouge

[10]Protest of Bowman application withdrawn subsequent to hearing.

on the south.[11] It operates 30 terminals and 2 agency stations throughout its routes which include 12 in Mississippi, 7 in Missouri, 4 in Arkansas, 2 each in Kansas, Louisiana and Alabama, and 1 each in Illinois, Tennessee and Oklahoma. It operates 374 tractors, 738 trailers and 200 pickup and delivery trucks. Its operating revenue in 1966 was almost $21.8 million.

Interest: - Some traffic moving to or from each of Campbell Sixty-Six's terminals is subject to diversion by these applications. For most of the terminals new direct single-line competitive services are being proposed. Campbell Sixty-Six is of the opinion that it is performing a reasonably adequate and satisfactory service and is capable of handling additional freight. Its offered service between Birmingham and its direct points in Mississippi varies from overnight to second day and between Birmingham and Missouri points second or third day service is offered. Data reflecting operations during certain test periods reflect on time performance on shipments handled ranging from 71.6 to 82.4 percent. Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants. However, in this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender it freight for certain Mississippi points it is authorized to serve.

Shippers Express, a motor common carrier of general commodities operating within the State of Mississippi between Jackson, on the one hand, and, on the other, points in Mississippi within 100 miles of Jackson, appeared as a witness supporting the protest of Campbell Sixty-Six as well as those of certain other protestants. Shippers Express serves primarily as a distribution carrier on interstate traffic interlined with other carriers including some of the applicants at Jackson. It maintains terminals at Jackson, Natchez, Vicksburg, Greenville and Philadelphia, Miss. It operates 12 tractors, 26 trailers and 23 pickup trucks.

JACK COLE COMPANY (JACK COLE) - DIXIE HIGHWAY EXPRESS, INC. (DIXIE) - BIRMINGHAM, ALA.

Protest: - All applications.

Operations: - Jack Cole and Dixie are motor common carriers of general commodities as well as of specific commodities. Jack Cole controls Dixie and has been operating Dixie since January 1965.[12] Jack Cole's operation extends primarily between

[11] In February 1969, Campbell Sixty-Six received a certificate from this Commission authorizing extension of its operations to Atlanta restricted to the transportation of traffic originating at or destined to or interlined with other carriers at authorized service points on its presently authorized routes in Mississippi and Missouri except Gulfport, Miss., and Kansas City and St. Louis, Mo., and points within the commercial zones of each. (No. MC-75320 (Sub-No. 106)). This certificate was canceled by certificate No. MC-75320 (Sub-No. 150), issued April 23, 1970, authorizing the transportation of general commodities, with exceptions, between Birmingham and Atlanta, serving all intermediate points and the off-route point of Bessemer, Ala., and those located within 5 miles of Birmingham and Atlanta. The Sub-No. 150 rights, which were formerly held by United Motor Freight Terminal, Inc., were authorized to be merged with those of Campbell pursuant to an order of the Commission in No. MC-F-10585, entered November 14, 1969. All of the former's certificates have been canceled. Pursuant to an order of the Commission in No. MC-F-10219, entered November 8, 1968, Campbell was issued a certificate, No. MC-75320 (Sub-No. 144), on April 16, 1969, authorizing the extension of its operations between Tulsa, Okla., and Wichita Falls, Tex.

[12] On November 15, 1967, R. E. Short, who controls Admiral-Merchants Motor Freight, Inc., of Minneapolis, Minn., acquired control of both of these companies pursuant to authority of the Commission in No. MC-F-9871. As indicating in appendix C and appendix D, footnote *, Cole and Dixie have merged and the surviving corporation's name is Jack Cole-Dixie Highway Company

numerous Alabama points, on the one hand, and, on the other, points in Tennessee, Indiana, Ohio, a portion of Illinois including Chicago, and the Detroit, Philadelphia and New York City areas. Dixie's operation is over a network of routes primarily between New Orleans, La., and Jackson, Miss., on the west, and Atlanta and Columbus, Ga., on the east, passing through such principal intermediate points as Meridian, Laurel and Hattiesburg, Miss., Anniston, Birmingham, Montgomery, Opelika, Selma and Tuscaloosa, Ala. Together these protestants maintain 28 terminals and agency stations throughout the territory served. They operate a total of 194 tractors and 755 trailers over the road, and for city work, 162 pickups, 142 tractors and 45 trailers. Their combined operating revenue for 1966 was almost $21 million.

Interest: - Jack Cole and Dixie handle a substantial amount of freight which would be subject to diversion by one or more of the applicants. In the month of May 1967, 40,492 of the shipments handled by these protestants weighing over 47.4 million pounds and producing revenue for Jack Cole and Dixie of $911,059 would be subject to diversion through these applications. This constitutes approximately 52 percent of the total combined revenues of Jack Cole and Dixie for the month. Of these shipments, 5,716 weighing some 5.6 million pounds and producing revenue of $97,822 were interlined between Jack Cole or Dixie and the applicants. By far the largest amount of this interline was with Red Ball at Jackson, Miss. Interline with Red Ball accounts for about 10 percent of the operating revenue of Dixie and almost 4 percent of the combined operating revenue of Jack Cole and Dixie.

Jack Cole and Dixie hold out to the public a second day service between their terminal points in Alabama, Georgia, Louisiana, Mississippi and Tennessee. Faster service is not held out because the freight is routed through the Birmingham terminal as a break-bulk station. This involves some delay resulting in the greater portion of the freight between these terminals receiving second day service. The carriers have experienced no substantial objection to the service from their shippers. Records of performance during a one week period in May 1967 discloses on time performance out of the Atlanta terminal ranging from 58 to 93.7 percent of the shipments handled; from the Birmingham terminal from 72.6 to 100 percent on time performance, from the New Orleans terminal from 87 to 100 percent; from the Jackson terminal from 20 to 89 percent; from the Memphis terminal from 30 to 100 percent; and from the Meridian terminal from 25 to 67 percent. Of the total 1,136 shipments involved in the one week test period, 798 or 70 percent received on time service, and 94 percent were delivered by the third day.

Jack Cole-Dixie have an imbalance of freight moving westbound. In may 1967 they operated 129 empty vehicles from New Orleans, Jackson, Meridian and Memphis back to the Atlanta and Birmingham areas. They express the view that they are performing a reasonably adequate service to the public and that the grant of these applications not only will divert from them traffic essential to their continued operation, but also will result in reducing even more the freight available for eastbound operations from the four points mentioned to the Birmingham and Atlanta areas.

BROWN TRANSPORT CORP. (BROWN) - ATLANTA, GA.

Protest: - The Herrin application.

Operations: - Brown is a common carrier by motor vehicle of general commodities operating as here relevant over routes extending between Knoxville, Tenn., on the north and Augusta and Savannah, Ga., in the south and east, serving numerous intermediate points including Etowah and Maryville, Tenn., and Atlanta, Athens and Macon, Ga. It operates 12 terminals throughout its territory including 2 in Tennessee

and 10 in Georgia. It operates 225 trailers, 81 road tractors and 28 city tractors as well as 96 pickup and delivery units. Its operating revenue in 1966 was $5 million. Brown solicits traffic moving between points on its system, on the one hand, and, on the other, points in Alabama, Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas, operating primarily through the Atlanta gateway.

Interest: - Brown has joint through routes and rates with Herrin over the Macon gateway. It opposes Herrin's extension of operation into Atlanta which may well divert a considerable amount of freight. During June 1965, Herrin delivered to Brown in Macon for movement to Atlanta alone some 185 shipments weighing approximately 200,000 pounds. This traffic was diverted from Brown after Herrin filed this application. [As noted in Appendix A-1, page [illegible], in January 1968 Herrin extended its operation from Macon into Atlanta through a purchase of operating rights.]

EAST TEXAS MOTOR FREIGHT LINES, INC. (ETMF) [1]
DALLAS, TEX.

Protest: - All applications except that of Roadway.

Operations: - ETMF is a common carrier of general commodities operating over routes extending from its Dallas-Fort Worth base area southward to San Antonio, Houston, Port Arthur and Beaumont, Tex., eastward through Shreveport or Memphis to Birmingham and Atlanta, and northward through Little Rock and St. Louis to Chicago. Its operation into Atlanta and Birmingham was begun in April 1965 following purchase of those rights. ETMF maintains 19 terminals, 12 of which are located at Texas points. It operates a total of 581 tractors, 1,011 trailers, and 388 straight trucks. Its operating revenue for 1966 was $34.3 million. ETMF predominantly handles less-than-truckload freight. In 1966 it transported 2,123,486 shipments of which only 28,317 were truckloads and the average weight per shipment was 886 pounds. An analysis of freight billed at Dallas and transported to Atlanta in the week of June 26, 1967 (825 shipments) disclosed that 35.3 percent weighed less than 100 pounds; and of the freight billed at Atlanta and transported to Dallas in the same week (814 shipments), 25.9 percent weighed less than 100 pounds. In 1966 claims were filed on only one percent of the shipments handled and the ratio of claims paid to revenue was 1.56 percent.

Interest: - The nine applications being protested seek authority which duplicates that of ETMF to a substantial extent and will subject a large portion of its tonnage to possible diversion if granted. For example, in the first six months of 1967, from Atlanta to its Texas, Louisiana, Arkansas and Memphis terminals, ETMF transported 100,228 shipments weighing about 65.3 million pounds, and in the reverse direction from those terminals to Atlanta it transported 73,729 shipments weighing about 77.5 million pounds. From Birmingham there were 30,350 shipments weighing 27.8 million pounds and to Birmingham 26,664 shipments weighing 23.7 million pounds. Of all these, 78,588 shipments weighing a total of 62 million pounds moved between its Atlanta terminal, on the one hand, and its terminals at Dallas, Fort Worth and Houston on the other, and 24,925 shipments weighing a total of 19.4 million pounds

[1] In a report and recommended order in No. MC-41432 (Sub-No. 103), East Texas Motor Freight Lines, Inc., Extension—Mississippi and Louisiana Points, served March 26, 1971, an examiner found that the public convenience and necessity requires operation by East Texas, over regular routes, of general commodities, with the usual exceptions, between Birmingham and Shreveport, serving the intermediate points of Monroe and West Monroe, La., and Jackson, Meridian, and Vicksburg, Miss., and the off-route points of specified plantsites, subject to certain restrictions. The proceeding is pending on exceptions.

moved between its Birmingham terminal, on the one hand, and its Dallas and Fort Worth terminals on the other.

ETMF interlines freight with other carriers to provide joint through service. It maintains joint rates and through routes with 36 carriers at Birmingham including applicants Baggett, Bowman, Deaton and Floyd & Beasley; with 35 carriers at Atlanta including Baggett, Bowman and Johnson; with 24 carriers at Houston including Herrin, Red Ball and Strickland; with 30 carriers at Dallas including Herrin, Jones, Red Ball, Roadway and Strickland; with 23 carriers at Little Rock including Jones; with 12 carriers at Memphis including Bowman, Deaton, Herrin, Jones, Red Ball and Roadway; and with 12 carriers at Shreveport including Deaton, Herrin, Red Ball and Strickland. In the first six months of 1967 ETMF received a total of 8,866,311 pounds of freight at the three interchange points of Atlanta, Birmingham and Memphis from applicants Bowman, Johnson, Red Ball, Jones, Baggett, Floyd & Beasley and Deaton. Nearly one-half (4,239,915 pounds) was received from Bowman.

ETMF holds out to the public second day service on less-than-truckload freight between its Atlanta and Birmingham terminals, on the one hand, and, on the other, its terminals at Dallas, Fort Worth, Houston, Texarkana, Shreveport, Little Rock; and also between Birmingham, on the one hand, and, on the other, Beaumont, Henderson, Longview, Lufkin, Marshall and Tyler, with third day service between these latter points and the Atlanta terminal. Third day service also is offered between the Atlanta and Birmingham terminals, on the one hand, and, on the other, its San Antonio and Atlanta, Tex., terminals. A review of one week's traffic between the Atlanta and Dallas terminals, the Atlanta and Houston terminals, the Birmingham and Dallas terminals, and the Birmingham and Houston terminals, disclosed a total of 3,759 shipments handled, of which 2,958 or 78.7 percent were delivered on time, that is second day or better service.

ETMF is of the opinion it is rendering a reasonably adequate and satisfactory service to the public. It is not operating at capacity and is striving to obtain additional traffic. It now has the competition of a number of single-line services between its terminal points as well as numerous competitive joint-line services. Any diversion of its present freight which may result from the grant of these applications will impair its ability to continue its present standard of service.

TRANSCON LINES (TRANSCON) -
LOS ANGELES, CALIF.

Protest: - All applications except that of Roadway.

Operations: - Transcon is a motor common carrier of general commodities authorized to operate over a network of routes extending between Atlanta and Birmingham in the Southest through Memphis, Little Rock, Dallas, Fort Worth, Amarillo, Houston, Oklahoma City, Ponca City, Tulsa, St. Louis, Kansas City, Wichita and on to the West Coast; also between points in the New York City, Philadelphia, Wilmington, Baltimore and Washington area through the midwest and southwest points to the West Coast. Its authority to operate between these eastern points and the Southwest on a single-line basis was not acquired until after the hearing on these applications was begun. Transcon maintains 46 terminals throughout the area and operates 786 tractors and 2,097 trailers in over-the-road service, and 406 straight trucks, 476 tractors and 269 trailers in pickup and delivery service. Its operating revenue for 1966 was over $66 million and for the first quarter of 1967 almost $19 million.

In 1966 Transcon transported 1,942,282 less-than-truckload shipments and only 38,053 truckload shipments. Sixty-seven percent of its revenue was derived from less-

than-truckload freight. Although authorized to serve many points in Arkansas and Oklahoma, Transcon does not offer less-than-truckload service to any points other than Little Rock, Ark., and Oklahoma City, Tulsa and Ponca City, Okla., and their commercial zones. It interlines freight to other points in those States. Similarly, in Georgia and Alabama it generally interlines freight to points beyond the Atlanta and Birmingham area even though it is authorized to serve the points, unless there is a sufficient volume to warrant the operation. Its operation from Atlanta to Kansas City is necessarily by way of Oklahoma City or Tulsa involving some circuity. As a result Transcon interlines some of that traffic at Memphis with Jones. The average length of haul for Transcon in 1967 was 1,461 miles.

Interest - Joint-line shipments are a very important portion of Transcon's freight. In 1966, 67 percent of its total shipments were handled in joint-line service producing 51.8 percent of its total operating revenue. At 10 of its terminals involved in these proceedings, namely, Atlanta, Birmingham, Dallas, Houston, Kansas City, Little Rock, Memphis, Oklahoma City, Tulsa and Wichita, Transcon interlined with connecting carriers in the month of May 1967 almost 60 million pounds of freight. This includes 1,217,179 pounds with Bowman and 121,787 pounds with Johnson at Atlanta; 435,635 pounds with Baggett and Floyd & Beasley at Birmingham; 1,026,305 pounds with Herrin, Red Ball and Strickland at Dallas; and 137,591 pounds with Bowman at Memphis.

Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data reflecting tonnage and revenue involved from such freight for the year 1966.

TONNAGE—1966

	Weight	Revenue
Atlanta	*Pounds*	*Dollars*
1. (a) From Atlanta to Dallas and Houston	33,744,555	$799,483
(b) From Dallas and Houston to Atlanta	25,914,325	569,545
2. (a) From Atlanta to Memphis, Arkansas, Oklahoma, Missouri and Kansas	40,279,250	813,875
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Atlanta	31,956,435	714,875
3. (a) From Atlanta to Amarillo	4,385,305	133,822
(b) From Amarillo to Atlanta	1,010,719	28,406
4. (a) From Atlanta to West Coast	63,815,421	3,686,381
(b) From West Coast to Atlanta	52,067,563	3,123,730
Total Atlanta outbound	142,224,564	5,383,561
Total Atlanta inbound	110,949,045	4,436,556
Birmingham		
1. (a) From Birmingham to Dallas and Houston	5,741,068	104,288
(b) From Dallas and Houston to Birmingham	3,452,514	79,724
2. (a) From Birmingham to Memphis, Arkansas, Oklahoma, Missouri and Kansas	3,540,412	36,387
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Birmingham	9,678,891	94,464
3. (a) From Birmingham to Amarillo	2,785,135	61,745
(b) From Amarillo to Birmingham	635,731	13,125
4. (a) From Birmingham to West Coast	33,166,550	1,645,897
(b) From West Coast to Birmingham	20,449,658	1,180,537
Total Birmingham outbound	45,233,185	1,847,797
Total Birmingham inbound	34,246,294	1,367,850

Operation between the Eastern Seaboard and the Southwest was not begun until the latter half of 1966. For the month of May 1967 Transcon transported between its Dallas and Houston terminals, on the one hand, and, on the other, its terminals at Richmond, Va., Baltimore, Md., Carlstadt, Metuchen, and Trenton, N. J., Newburgh, N. Y., Philadelphia, Pa., and Wilmington, Del., a total of 3,426,928 pounds producing revenue of $130,938. This traffic too is subject to diversion.

Transcon is of the opinion that it is performing a satisfactory service to the public and is actively soliciting additional freight. A traffic study of shipments handled during certain periods in May 1966 between various of the Transcon terminals depicting the elapsed time from the Transcon billing date to the date the shipment was delivered to the consignee or a connecting line discloses the following data with respect to certain of the key terminals here involved.

PERIOD MAY 9 THROUGH MAY 21, 1966 EXCEPT AS NOTED BY * WHICH INDICATES PERIOD AS MAY 9 THROUGH MAY 13, 1966

From	To	Number of shipments	Service from billing date	
			2d day or better	3d day or better
			Percent	*Percent*
Birmingham	Oklahoma City	245	78.7	97.1
Do	Tulsa	173	83.8	97.6
Do	Dallas	131	34.3	91.6
Atlanta	Oklahoma City	446	60.7	73.
Do	Tulsa	310	77.8	95.1
Do	Dallas	1,427	56.7	98.8
Oklahoma City	Birmingham	109	67.	90.8
Tulsa	------do	172	59.9	86.
Dallas	------do	167	47.3	85.
Little Rock	------do	4	75.	75.
Oklahoma City*	Atlanta	42	28.6	52.4
Tulsa*	------do	78	74.3	92.3
Dallas*	------do	222	74.8	86.

ROADWAY EXPRESS, INC. (ROADWAY) [1]
AKRON, OHIO

Protest: - All applications except its own.

Operations: Roadway holds authority to operate as a motor common carrier of general commodities with the usual exceptions over an extensive network of routes in States generally east of and including Amarillo, Tex., Kansas City, Kans., and Milwaukee, Wis., except Florida, Maine, New Hampshire, and Vermont. It also is authorized to transport both general commodities and specified commodities over irregular routes.

Briefly Roadway's interconnecting network of regular routes extends along the Eastern Seaboard from Boston through Atlanta to Montgomery, Ala., with service at such major points as Providence, R. I., New Haven, Conn., New York City, Scranton, Harrisburg and Philadelphia, Pa., Baltimore, Md., Richmond, Va., and most major industrial cities and areas in the Carolinas and Georgia; also within the central and

[1] In No. MC-F-10178, *Roadway—Control—West Brothers* (not printed), decided June 26, 1969, the Commission approved Roadway's application to control West Brothers, Inc., a protestant in this proceeding.

southern States serving major industrial cities and areas in upper New York State, Ohio, Michigan, Illinois and Indiana, Milwaukee, Wis., St. Louis, Mo., Nashville, Memphis, and Chattanooga, Tenn., Atlanta, Ga., and Gadsden, Birmingham and Montgomery, Ala., and also between those areas and the Southwest serving such major points as Kansas City, Tulsa, Oklahoma City, Dallas, Houston, Amarillo and San Antonio, Tex. As noted in Appendix A-2 subsequent to the close of the hearing it acquired control of protestant West Brothers, Inc.

During 1966 Roadway transported a total of 4,996,034 shipments. Of these, 58.9 percent weighed less than 300 pounds and 83.9 percent weighed under 1,000 pounds. Its 119 terminals include its major break-bulk terminals as well as the satellite terminals which for the most part feed through one of the major break-bulk terminals. Direct loading from origin to destination is the usual practice where the volume of freight warrnts; otherwise the shipments are routed through one of the break-bulk terminals.

Interest: - A large portion of Roadway's present traffic will be subject to diversion if these applications are granted. For example, in a two week period May 29 through June 11, 1966, Roadway transported over 16,000 shipments weighing in excess of 13 million pounds moving between Texas points, on the one hand, and, on the other, points in Georgia, Alabama, North Carolina, South Carolina, Tennessee, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. All of this traffic would be subject diversion to one or more of the applicants. Roadway maintains that this freight is now subject to numerous single- and joint-line competitive services and that Roadway performs a satisfactory service for the public.

Roadway has established certain service standards which it holds out to the public. These are said to be realistic standards which form the major basis for Roadway's incentive monetary awards to its employees. Briefly the Roadway schedules to and from Dallas and Houston are third morning for Alabama, Tennessee and Georgia points with the exception of Atlanta which is second morning. Between Texas points and the satellite terminal points in North Carolina and South Carolina the standard is four days, and three days from or to the major terminals of Greenville, Spartanburg, Charlotte and Winston-Salem. Its schedules are four days between the Texas points and points in Virginia, Kentucky, Maryland, Pennsylvania, New Jersey and the major points in upper New York State. They are five days to and from the satellite upstate New York points and all of New England. Employees at the various terminals responsible for "on time" performance under these standards receive incentive awards on the basis of performance within the standard. In 1966 Roadway paid approximately $3 million in incentive awards. These service standards are constantly reviewed so that they will not be too stringent to destroy the incentive, nor so liberal as to be too costly to the company. A review of the elapsed time from the Roadway billing date to delivery of the freight to the consignee or connecting carriers for these 16,000 shipments indicates a very substantial on time performance under the Roadway standards.

In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance.

HERRIN TRANSPORTATION COMPANY (HERRIN)[1] - HOUSTON, TEX.

Protest: - The Red Ball, Deaton, Floyd & Beasley, Strickland, Baggett and Jones applications.

Operations: - See under applicants' evidence in the attached report.

In brief Herrin's authority extends from Dallas-Fort Worth and Houston on the west to Little Rock and Memphis on the north, also through Shreveport, La., Jackson, Miss., and Montgomery, Ala., to Columbus, Ga.; and along the Gulf Coast through Beaumont, Port Arthur, New Orleans and Pensacola to Jacksonville, Fla., and Brunswick and Savannah, Ga., on the East Coast. It serves 16 points in Arkansas, 50 in Florida, 125 in Georgia, 237 in Louisiana, 15 in Tennessee and 155 in Texas.

Interest: - A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted. During the last three months of 1966 the freight handled through its various terminals which is considered subject to diversion by these application is as follows:

Herrin Freight affected by applications period - October, November, December 1966

From (terminal)	Number of shipments	Weight	Herrin revenue
		Pounds	
Dallas	4,794	4,786,017	$91,420
Houston	7,970	9,201,446	159,884
Macon	3,984	5,335,721	96,288
Pensacola	467	2,408,350	27,405
Savannah	1,641	2,328,285	48,726
Jacksonville	5,704	6,296,718	130,336
Shreveport	825	878,505	15,351
Monroe	256	302,892	4,967
Baton Rouge	339	2,912,990	22,757
Lake Charles	649	631,535	85,862

ET&WNC TRANSPORTATION COMPANY (ET&WNC) - JOHNSON CITY, TENN.

Protest: - The Baggett and Bowman applications.

Operations: - ET&WNC is a motor common carrier of general commodities operating over regular routes extending between New York City, Philadelphia, Wilmington, Baltimore and Washington on the north and east, Little Rock, Ark., on the west, and Greenwood and Greenville, Miss., on the south, serving points in North Carolina, South Carolina and Tennessee, northwest Georgia, northwest Alabama,

[1]As noted in footnote 1 of appendix A, Herrin has been merged into McLean and the latter has been substituted for the former herein. In a report and recommend order in No. MC-F-10260 *McLean Trucking Company—Purchase—S.A. Harrison*, served November 26, 1969, which became effective on January 21, 1969, McLean was authorized to purchase certain authority. Pursuant thereto, a certificate in No. MC-31389 (Sub-No. 120) was issued on August 27, 1970, authorizing regular-route service between Nashville, Tenn., and Atlanta, serving intermediate and off-route points in Davidson County, Tenn. Additionally, McLean, as substituted applicant for Herrin in No. MC-31389 (Sub-No. 121), which certificate was issued March 27, 1970, was granted authority to transport general commodities between Memphis, Tenn., and Baton Rouge, La.

western Mississippi and northeastern Akransas. It maintains 33 terminals including 14 in Tennessee, 7 in North Carolina, 4 in Mississippi, 2 each in South Carolina and Arkansas and 1 each in Alabama, Maryland, Pennsylvania and New York. It operates 271 tractors, 539 trailers and 133 pickup and delivery trucks. Its operating revenue for 1966 was over $11.5 million.

Interest - ET&WNC protests the Bowman proposal to serve Little Rock and Jonesboro, Ark., and Greenwoood and Greenville, Miss., and its proposal to serve points west of Memphis involving freight which ET&WNC handles on an interline basis primarily through its Memphis terminal. Its protest of the Baggett application includes primarily the proposal to serve between certain points in Texas and Louisiana, on the one hand, and Chattanooga and points in north Alabama common to both carriers, on the other. Those points include Florence, Tuscumbia, Muscle Shoals, Sheffield and Scottsboro.

A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. During the month of May 1966 ET&WNC transported some 2,747 shipments weighing over 2 million pounds to or from the following of its terminals which would be subject to diversion.

ET&WNC Freight subject to diversion by Bowman & Baggett applications - May 1966

ET&WNC terminal	Number of shipments	Weight
		Pounds
Little Rock, Ark.		
Outbound	450	216,699
Inbound	617	734,747
Jonesboro, Ark.		
Outbound	69	19,495
Inbound	74	76,077
Greenville, Miss.		
Outbound	176	93,337
Inbound	128	177,040
Greenwood, Miss.		
Outbound	96	34,204
Inbound	102	64,783
Memphis, Tenn.		
Outbound	600	102,535
Inbound	435	546,921

This is valuable and necessary traffic and any loss will adversely affect ET&WNC Additionally, ET&WNC has the equipment and facilities to handle increased tonnage over its lines.

UNITED MOTOR FREIGHT TERMINAL, INC. (UNITED) - BIRMINGHAM, ALA.

Protest: - The Herrin, Red Ball, Floyd & Beasley, Strickland, Johnson and Jones applications.

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[11] See footnote 11, supra.

Operations: - United is a motor common carrier of general commodities operating over regular routes between Atlanta and Birmingham serving intermediate points and off-route points within 15 miles of Atlanta and those within 5 miles of Birmingham. It maintains terminals at Atlanta, Ga., Birmingham, Anniston and Heflin, Ala. It operates 48 trailers, 14 over-the-road tractors, 17 city tractors and 31 pickup trucks. During 1966 it transported 143,809 less-than-truckload shipments and 2,122 truckload shipments, and its operating revenue was over $1.3 million. United has interline arrangements with 39 connecting carriers at Atlanta and 35 at Birmingham. Over 60 percent of its traffic is interlined.

United holds out overnight service between Atlanta and Birmingham, operating about six schedules per day from Birmingham to Atlanta and eight or nine in the reverse direction from Atlanta to Birmingham. This imbalance has necessitated the return of 8 to 10 empty vehicles per week from Birmingham. During two different one week test periods United transported an aggregate of 1,264 shipments from Birmingham to Atlanta of which 86.8 percent received overnight service, and 96.8 percent were delivered by the second day. In the same periods United transported an aggregate of 3,978 shipments from Atlanta to Birmingham of which 95.6 percent received overnight service and 98.6 percent were delivered by the second day.

Interest: - Three of the applicants (Strickland, Red Ball and Jones) propose a service between Atlanta and Birmingham which will be directly competitive with that of United. In addition, United interlines substantial freight moving to or from Louisiana and Texas points much of which traffic will be subject to diversion to the proposed single-line services of the applicants. For some years United has worked closely with Mercury Freight Lines which operates between Birmingham, on the one hand, and, on the other, Dallas, Fort Worth, Houston and Beaumont, holding out to the public a third day service from Atlanta to these Texas points on less-than-truckload freight. A review of the shipments during the previously noted two one week test periods, disclosed that of the 214 shipments transported by the Mercury Freight/United joint-line service from Texas points to Atlanta, 66.8 percent were delivered on time (within the third day) and 93 percent were delivered by the fourth day.

United is a relatively small short line (approximately 165 miles) carrier which now has substantial single-line competition for freight moving between Atlanta and Birmingham and also single-line competition for its joint-line services in connection with freight moving between Atlanta and the Texas points. It is in a position to handle additional freight. Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United.

RED BALL MOTOR FREIGHT, INC. (RED BALL) - DALLAS, TEX.

Protest: - The Herrin Roadway, Deaton, Floyd & Beasley, Strickland, Baggett, Bowman and Johnson applications.

Operations: - See under applicants' evidence in the attached report.

In brief Red Ball is a motor common carrier of general commodities operating over a network of routes within the States of New Mexico, Colorado, Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Mississippi, Alabama, Kansas and Missouri. It operates 654 tractors, 1,591 trailers, and 712 pickup trucks. Its operating revenue in 1966 was over $41.6 million (73 percent of which was derived from less-than-truckload freight and 27 percent from truckload). It operates 93 terminals throughout its routes and serves 136 points in Arkansas, 24 in Alabama, 630 in Louisiana (153 of

which are intrastate only), 541 points in Texas, 112 points in Colorado, 83 points in New Mexico, and Kansas City, Kans.-Mo., and Memphis, Tenn. It maintains interline arrangements with a large number of carriers at various points on its routes including most of the applicants.

Interest: - Applicants are proposing competitive single-line services between points which Red Ball now serves. In addition, they propose services between Atlanta and Birmingham and points now served by Red Ball which duplicate the proposal of Red Ball as an applicant. It is Red Ball's position that its present services are adequate and satisfactory to meet any public need. Red Ball holds out to the public a second day service between Dallas, Tex., and Jackson, Miss.; also between Mobile, New Orleans and Baton Rouge, on the one hand, and, on the other, Houston, Beaumont, Port Arthur, Orange and Dallas; and also between Memphis, on the one hand, and, on the other, Dallas, Houston, New Orleans, Kansas City and Baton Rouge. It offers a first day service between Dallas, on the one hand, and, on the other, Monroe and Shreveport, La., El Dorado and Crossett, Ark., Jackson, Miss., and Baton Rouge, La. During the two months of March and July 1967 Red Ball transported an aggregate of 4,797 shipments from Dallas to Jackson, Miss., of which 85.2 percent received on time delivery to consignees or connecting carriers (not more than second day service) and 97.5 percent were delivered by the third day. In July 1967 Red Ball transported 432 shipments from Baton Rouge to Memphis delivering 85.6 percent on time (by the second day) and 93.5 percent by the third day. Data exhibiting service performance between other points was not furnished.

Red Ball expresses the view that if additional authority is to be granted for single-line service between Atlanta and Birmingham, on the one hand, and points in Louisiana, Mississippi, Arkansas, Texas, Kansas and Missouri, on the other, as sought by these applicants, Red Ball is the appropriate recipient of such authority because of its extensive coverage of cities and communities in these States and its ample terminal and operating facilities and financial resources which would enable it to provide single-line services far more extensive in the southwest territory than those proposed by any of the other applicants.

RYDER TRUCK LINES, INC. (RYDER) - JACKSONVILLE, FLA.

Protest: - All applications.

Operations: - Ryder is a motor common carrier of general commodities operating over a network of routes extending between Miami, Fla., New Orleans, La., and Houston, Tex., on the south, Shreveport, La., Memphis, Tenn., and St. Louis, Mo., on the west, Milwaukee, Wis., Chicago, Ill., Indianapolis, Ind., Cincinnati, Ohio and Roanoke, Va., on the north, and Raleigh and Charlotte, N. C., and Jacksonville, Fla., on the east. Since April 1966 Ryder has controlled Harris Express, Inc. (Harris), who also is a motor common carrier of general commodities with regular routes extending between the New York City area on the north and Greenville, S. C., on the south by way of Philadelphia, Baltimore, Charlotte and Greensboro, N. C., among other important points. It is also authorized to serve substantial areas in North Carolina, South Carolina, Pennsylvania and New Jersey.

Prior to August 1965, Ryder was owned by Ryder System, Inc. Since that time it has been owned by International Utilities, Inc., which in turn is owned by International Utilities Corporation. Following the change in ownership there have been a number of changes in management and operations.

Ryder operates 568 over-the-road tractors, 1,742 over-the-road trailers, 499 pickup trucks, 627 pickup tractors and 549 pickup trailers. Harris Express operates 50 over-

the-road tractors, 136 over-the-road trailers, 26 pickup tractors, 6 pickup trailers and 25 pickup trucks. Ryder's operating revenue for the first six months of 1967 was about $28 million. Ryder operates 60 terminals and 18 agency terminals on its routes, and Harris operates 10 terminals.

Ryder handles mainly less-than-truckload shipments and where the volume of freight warrants it operates direct schedules between its terminals. Where the traffic volume does not warrant, it will operate through one of its break-bulk terminals for the purpose of consolidating freight. It serves much of its territory through the operation of peddle runs to the smaller towns and communities near its terminals. At times it also interlines freight with other carriers to some points it is authorized to serve directly where, considering the volume and flow of traffic involved, such interline service will result in a faster and more satisfactory handling of the freight. It maintains connecting line concurrences with many carriers but for the most part limits participation in through rates to two line hauls.

Interest: - Ryder opposes the portions of these 10 applications that would enable the applicants to operate between points in Texas, Louisiana or Mississippi, on the one hand, and, on the other, points in North Carolina, South Carolina, Georgia, Florida, Tennessee and Alabama; also between points in Louisiana, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Ohio and Wisconsin; and between Memphis and Atlanta, Ga., or points in Florida. In connection with its operation of Harris Express, it is also opposed to the applications (particularly those of Bowman, Roadway and Johnson) which will enable those carriers to operate between the Harris territory in New York, New Jersey, Pennsylvania, the District of Columbia, Maryland, Delaware, Virginia, North Carolina and South Carolina, on the one hand, and, on the other, points sought to be served in Louisiana, Mississippi and Texas that are served by Ryder.

During a one week test period in March 1966 Ryder transported some 7,258 shipments weighing over 8.9 million pounds between certain points on its routes in the area most involved in these applications. All of this freight is considered to be subject to diversion if these applications are granted. On an annual basis Ryder estimates that this volume of freight subject to diversion will amount to approximately $7.5 million in revenue to Ryder. This is exclusive of any of the Harris shipments which would be affected by these applications.

Ryder has established certain service standards which it holds out to the public. These standards are applicable not only to the terminal cities specified but also to the areas served by those terminals. For example, the Houston terminal also serves Texas City and Galveston. As related to these applications the service standards (in days) are as follows:

Service standards of Ryder Truck Lines, Inc., between areas involved in the instant applications

Between	Houston, Tex.	All other Texas terminals	New Orleans, La.	Baton Rouge, La.	All other Louisiana terminals	Jackson, Miss.	Meridian, Miss.	All other Mississippi terminals	Memphis, Tenn.
Charlotte, N.C------	3	4	3	3	4	3	3	3	3
All other N.C. terminals.	4	4	4	4	4	4	4	4	4
Greenville, S.C -----	3	4	3	3	3	3	3	3	3
Atlanta, Ga---------	3	4	2	2	3	2	2	3	2
All other Georgia terminals.	4	4	3	3	4	3	3	4	3
Jacksonville, Fla ---	4	4	3	4	4	3	3	4	2*/3**
Miami, Fla ---------	3	4	4	3	4	3	3	4	3*/4**
Tampa, Fla---------	3	4	4	2	4	3	3	4	3*/4**
All other Florida terminals.	4	4	4	3	4	4	4	5	3*/4**
Nashville, Tenn-----	3	4	3	3	4	3	3	4	1
Chattanooga, Tenn --	3	4	3	3	4	3	3	4	2
Knoxville, Tenn-----	4	4	3	3	4	3	3	4	2
All other Tennessee terminals.	4	4	3	4	4	4	4	4	2
Birmingham, Ala ----	3	3	2	2	3	2	2	2	-------
All other Alabama terminals.	4	4	3	3	4	2	2	3	1
Eastern terminals ---	5	5	5	5	5	5	5	5	5
Ill., Ind., Ky., Ohio, and Wis. terminals.	4	4	3	3	4	3	3	4	2

**Northbound standard

*Southbound standard

An analysis of the 7,258 shipments during the one week test period discloses on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent, on the basis of the Ryder standards. Some of the shipments involved in this study were interlined by Ryder to destination even though Ryder is authorized to serve the point directly. The time computation includes only the time from Ryder's billing date to delivery to consignee or connecting line carriers. The number of shipments moving between the areas involved in the study and the performance is as follows:

Analysis of service performance of Ryder Truck Lines, Inc., on shipments between certain areas during period of March 13 through 19, 1966

Between	Texas		Louisiana		Mississippi		Memphis	
	Number of shipments	Percent on time	Number of shipments	Percent on time	Number of shipments	Percent on time	Number of shipments	Percent on time
North Carolina	891	89.7	589	85.7	185	83.9	-------	-------
South Carolina	826	83.7	181	81.7	32	81.3	-------	-------
Georgia	649	87.5	607	85.0	99	81.8	389**	85.6**
Florida	927	87.1	76	82.9	55	81.5	757	85.7
Tennessee	251	84.5	394	88.4	93	83.9	-------	-------
Alabama	208	90.9	457	87.5	55	85.5	-------	-------
Ill., Ind., Ky., Ohio, and Wis.	-------	-------	87*	80.5*	-------	-------	-------	-------

*To and from Baton Rouge and New Orleans, La., only.

**To and from Atlanta, Ga., only.

Although Ryder experienced some pickup difficulties and delays in the fall of 1965 after the merger of the Hoover Motor Express Company and the consolidation of terminal facilities of Hoover and Ryder at Atlanta, those problems appear to have been solved. A record of requests for pickup service during two weeks in March and one week in April 1967 indicates a total of 5,820 pickups scheduled, of which 5,736 or 98.6 percent were made.

Ryder believes that diversion of a substantial portion of its freight which may result from a grant of these applications will cause a decrease in its number of direct schedules between important service centers, will result in deterioration of its service to the public, and will adversely affect its financial status.

BRASWELL MOTOR FREIGHT LINES, INC. (BRASWELL), DALLAS, TEX.

Protest: - All applications.

Operations: - Braswell is a motor common carrier of general commodities authorized to operate over regular routes extending from Los Angeles on the west by way of Phoenix, Tucson, El Paso to Houston, Tex., on the south; also by way of Fort Worth-Dallas and Shreveport to Memphis, Tenn., Jackson, Miss., and Baton Rouge and New Orleans, La., on the east; also between Houston and Oklahoma City and Tulsa by way of Dallas-Fort Worth; between New Orleans and Oklahoma City and Tulsa by way of Shreveport; and between New Orleans and Memphis by way of Jackson or Vicksburg. Braswell also is authorized to operate between points in Oklahoma, on the one hand, and, on the other, St. Louis, Mo., and points in Central and eastern Illinois including Chicago.[1]

Braswell has 34 terminals including 15 in Texas, 7 in Louisiana, 4 in Oklahoma, 3 in each Mississippi and Arizona, and 1 each in California and Tennessee. It operates 177 line-haul tractors, 316 line-haul trailers, 64 pickup tractors, 53 pickup trailers, and 152 straight trucks. Its operating revenue for 1966 was approximately $11.5 million. About 40 percent of its tonnage is interline freight.

Interest: - During the year 1966 (prior to instituting any service under its certificate authorizing an extension of operation between Jackson and Atlanta and Birmingham) approximately 25.7 percent of the tonnage tran ported by Braswell producing about 16 percent of its total operating revenue would have been subject to diversion if these applications had been granted. This tonnage is comprised of freight moving between the following points:

[1] At the time of the hearing in these proceedings the Commission had granted Braswell authority for the extension of its regular routes from Jackson, Miss., by way of Birmingham, Ala., to Atlanta, Ga., with service also at Gadsden, Ala., and Rome, Ga., and from Jackson by way of Meridian, Miss., Montgomery, Ala., and Columbus, Ga., to Atlanta serving intermediate points. However, service had not been initiated under that grant of authority pending termination of a certain civil litigation pertaining to the Commission decision. That litigation has been ended upholding the Commission's grant of the authority. Under the new certificate, Braswell proposes to serve some additional 141 points in Mississippi, Alabama, and Georgia and establish a number of terminals in that area. Additionally, Braswell was granted authority in *Braswell Motor Freight Lines, Inc., Extension*, 112 M.C.C. 558 (1970), to transport general commodities, with the usual exceptions over regular routes between Houston, Tex., and New Orleans, La. The certificate authorizing such operations, in No. MC-111383 (Sub-No. 17), was issued July 16, 1971.

Braswell freight subject to diversion - 1966 system totals

Tonnage: 477,298,858 pounds
Revenue: $11,542,495.81

Terminal	Tonnage	Revenue
	Pounds	
rt Worth to:		
ew Orleans	9,071,597	$136,485.48
ackson	2,551,656	46,210.05
Memphis	1,156,867	24,967.53
llas to:		
New Orleans	11,404,109	226,242.49
Jackson	5,837,214	139,949.72
Memphis	2,979,516	62,403.12
ouston to:		
Jackson	1,506,826	25,315.36
Memphis	1,113,260	19,998.49
hreveport to:		
Jackson	1,525,919	19,320.87
Memphis	1,049,486	18,441.87
lonroe to:		
Jackson	280,770	3,107.18
Memphis	2,921,903	22,576.00
ackson to:		
Fort Worth	1,299,588	28,349.29
Dallas	7,218,988	127,343.56
Houston	1,413,704	27,978.65
Shreveport	1,050,695	18,180.84
Monroe	537,457	7,266.98
Memphis	1,838,375	27,506.00
Memphis to:		
Fort Worth	1,124,875	20,564.55
Dallas	6,686,569	108,827.88
Houston	2,778,958	48,621.24
Shreveport	4,194,428	57,948.91
Monroe	4,598,838	69,852.81
Baton Rouge	3,628,224	56,665.88
New Orleans	11,445,006	155,256.47
Jackson	4,759,652	60,189.69
Baton Rouge to:		
Memphis	5,414,593	88,841.94
New Orleans to:		
Memphis	8,554,574	105,959.76
Fort Worth	2,579,605	35,744.93
Dallas	12,170,480	147,882.14

Braswell's protest of the applications is based not only upon this freight diversion, but also upon the diversion which may result from the proposed services which will be competitive with its extended operations to Mississippi, Alabama, and Georgia points. It urges that its services have been satisfactory to the public as evidenced by the lack of complaints against it. Braswell's schedules offered to the public for example, include first day service between Jackson, Miss., on the one hand, and, on the other, Baton Rouge, New Orleans, Dallas, and Shreveport, and second day service between Jackson and Houston, Oklahoma City or Tulsa; also first day service is offered between Memphis and New Orleans, and second day service between Memphis, on the one hand, and, on the other, Dallas, Oklahoma City, and Tulsa.

APPENDIX H

Description of regular routes authorized

PART I

In No. MC-2229 (Sub-No. 123):

(1) Between Atlanta, Ga., and Texarkana, Ark.: From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S Highway 82, thence over U.S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U.S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.: From Jackson over U.S. Highway 80 to junction U.S. Highway 29, thence over U.S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala.: From Meridian over U.S. Highway 11 to Tuscaloosa, and return over the same route, serving no intermediate points, and serving the termini for the purposes of joinder only, as an alternate route for operating convenience only.

PART II

In No. MC-94201 (Sub-No. 56):

(1) Between Mobile, Ala., and Houston, Tex.: From Mobile over U.S. Highway 90 to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Pascagoula, Miss.; New Orleans, Baton Rouge, and Lake Charles, La.; and Orange and Beaumont, Tex., and the off-route points of Grand Isle, Lockport, and Golden Meadow, La., and Port Arthur, Baytown, and Texas City, Tex.

(2) Between Tuscaloosa, Ala., and New Orleans, La.: From Tuscaloosa over U.S. Highway 11 (also over Interstate Highway 59) to New Orleans, and return over the same route, serving the intermediate points of Meridian, Laurel, and Hattiesburg, Miss., and serving the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purposes of joinder only.

(3) Between Poplarville, Miss., and Baton Rouge, La.: From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La.,

thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, serving Poplarville for the purposes of joinder only, as an alternate route for operating convenience only.

(4) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59: from Montgomery over U.S. Highway 80 to junction U.S. Highway 11 and Interstate Highway 59, and return over the same route, serving all intermediate points in Alabama.

(5) Between Meridian, Miss., and Fort Worth, Tex.: From Meridian over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth, and return over the same route, serving the intermediate points of Jackson and Vicksburg, Miss., Monroe, Ruston, and Shreveport, La., and Marshall, Gladewater, Longview, and Dallas, Tex.

(6) Between Tuscaloosa, Ala., and Fort Worth, Tex.: From Tuscaloosa over U.S. Highway 82 to Texarkana, Tex.-Texarkana, Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth, and return over the same route, serving the intermediate points of Columbus, Greenwoood, and Greenville, Miss., El Dorado and Crosset, Ark., Texarkana, Tex-Texarkana, Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark.

(7) Between Memphis, Tenn., and Topeka, Kans.: From Memphis over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo., thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka, and return over the same route, serving the intermediate points of Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo. and Kansas City, Mo.-Kansas City, Kans.

(8) Between Memphis, Tenn., and Little Rock, Ark.: From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving no intermediate points.

(9) Between West Memphis, Ark., and Little Rock, Ark.: From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., and return over the same route, serving no intermediate points.

(10) Between Little Rock, Ark., and Greenville, Miss.: From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.: From Houston over U.S. Highway 75 (also over Interstate Highway 45) to Dallas, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.: From Little Rock over Interstate Highway 30 (also over U.S. Highway 67) to Texarkana, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

PART III

In No. MC-106401 (Sub-No. 18):

(1) Between Atlanta, Ga., and Fort Worth, Tex.: From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same

route, serving the intermediate points of Jackson, Miss., Monroe and Shreveport, La., and Dallas, Tex.

(2) Between New Orleans, La., and Houston, Tex.: From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route, serving the intermediate points of Baton Rouge, La., and Orange, Beaumont, and the off-route point of Texas City, Tex.

(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala.: From Montgomery over U.S. Highway 80 to junction U.S. Highway 11, and return over the same route, serving no intermediate points, and serving the said junction for the purpose of joinder only, as an alternate route for operating convenience only.

114 M.C.C.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 30th day of December 1971.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA.

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION—ATLANTA, GA.

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION—DALLAS, TEX.

(Reentitled)

DEATON, INC., EXTENSION—DALLAS, TEX.

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION—DALLAS, TEX.

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION—ATLANTA, GA.

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION—DALLAS, TEX.

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION—
DALLAS, TEX.

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION—
DALLAS, TEX.

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION—
ATLANTA, GA.

Investigation of the matters and things involved in these proceedings has been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That the petition of interveners in support of the application in No. MC-106401 (Sub-No. 18), to file a supplement to their exceptions, embracing tendered supplement, and the petition of applicant in No. MC-94201 (Sub-No. 56), to supplement its exceptions, embracing tendered supplement, corrected by letter dated September 16, 1971, be, and they are hereby, denied, for the reason set forth in the said report.

It is further ordered, That the applications in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67) be, and they are hereby, denied.

It is further ordered, That the applications in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), except to the extent granted in said report, be, and they are hereby, denied.

And it is further ordered, That unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service hereof, or within such

additional time as may be authorized by the Commission, such grants of authority made in said report shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, division 1.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX C

Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served September 6, 1972, overruling petitions for further hearing and reconsideration.

SERVICE DATE
SEPTEMBER 6, 1972

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division Acting as an Appellate Division, held at its office in Washington, D.C., on the 1stday of September , 1972.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION - ATLANTA, GA.
(Houston, Tex.)

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION - ATLANTA, GA.
(Winston-Salem, N.C.)

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION - ATLANTA, GA.
(Dallas, Tex.)

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

(Reentitled)

DEATON, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION - DALLAS, TEX.
(Sycamore, Ala.)

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, GA.
(Dallas, Tex.)

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX
(East Gadsden, Ala.)

No. MC-1124 (Sub-No. 206)

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX.
(Charlotte, N.C.)

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA.
(Springdale, Ark.)

Upon consideration of the record in the above-entitled proceedings, and of:

(1) Protest-representation and request for oral hearing of Colonial Refrigerated Transportation, Inc., in No. MC-94201 (Sub-No. 56), filed March 17, 1972, pursuant to publication of grant of authority in the February 24, 1972, issue of the Federal Register, treated as a petition for leave to intervene embracing request for further hearing;

(2) Petition of Colonial Fast Freight Lines, Inc., in No. MC-94201 (Sub-No. 56), filed March 20, 1972, pursuant to publication noted in (1) above, for leave to intervene;

(3) Petition of Bell Transfer Company, Inc., in No. MC-94201 (Sub-No. 56), filed March 22, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(4) Petition of Southern Forwarding Company, in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(5) Petition of Atlas Transit, Inc., in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(6) Petition of Arkansas-Best Freight System, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at further hearing;

(7) Petition of Dean Truck Line, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(8) Motion of applicant in No. MC-94201 (Sub-No. 56), filed April 4, 1972, to strike, and, in the alternative to dismiss and reply to the protest-representation in (1) and the petitions in (2), (3), (4), (5), (6), and (7) above;

(9) Petition of Ryder Truck Lines, Inc., protestant, filed May 18, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(10) Petition of applicant in No. MC-111231 (Sub-No. 67), filed May 18, 1972, for reconsideration;

(11) Joint petition of Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., protestants, filed May 19, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(12) Petition of applicant in No. MC-1124 (Sub-No. 206), filed May 22, 1972, for reconsideration and, alternatively, for reopening for further hearing;

(13) Joint petition of Holloway Motor Express, Inc., Consolidated Freightways Corporation of Delaware, Yellow Freight System, Inc., Transcon Lines, and T.I.M.E.-D.C., Inc., protestants, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(14) Petition of applicant in No. MC-11207 (Sub-No. 233), filed May 22, 1972, for reconsideration;

(15) Petition of Jack Cole-Dixie Highway Company, protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(16) Joint petition of Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, and Gordons Transports, Inc., protestants, filed May 22, 1972, corrected and supplemented May 30, 1972, for reconsideration in Nos.

MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(17) Petition of Roadway Express, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(18) Petition of Braswell Motor Freight Lines, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(19) Petition of applicant in No. MC-76177 (Sub-No. 304), filed May 22, 1972, for reconsideration;

(20) Petition of Red Line Transfer & Storage Company, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), and MC-94201 (Sub-No. 56);

(21) Petition of applicant in No. MC-59680 (Sub-No. 147), filed May 22, 1972, for reconsideration;

(22) Late-tendered joint petition of Alamo, Express, Inc., Central Freight Lines, Inc., Eagle Motor Lines, Inc., and Red Arrow Freight Lines, Inc., protestants, filed May 23, 1972, for reconsideration in No. MC-94201 (Sub-No. 56);

(23) Joint reply by 41 shippers, interveners in support in No. MC-106401 (Sub-No. 18), filed June 12, 1972, to the petitions for reconsideration in No. MC-106401 (Sub-No. 18);

(24) Joint reply by Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, Gordons Transports, Inc., and Red Line Transfer & Storage Company, Inc., protestants, filed July 12, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(25) Reply by applicant in No. MC-2229 (Sub-No. 132), filed August 14, 1972, to the petitions for reconsideration of the grant in No. MC-2229 (Sub-No. 132);

(26) Reply by applicant in No. MC-94201 (Sub-No. 56), filed August 14, 1972, to the petitions for reconsideration in (9) through (21) above;

(27) Joint reply by Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(28) Joint reply by Transcon Lines and T.I.M.E.-DC, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(29) Joint reply by Roadway Express, Inc., and Roadway Express, Inc., of Mississippi, protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(30) Reply by Braswell Motor Freight Lines, Inc., protestant, filed August 16, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(31) Reply by applicant in No. MC-106401 (Sub-NO. 18), filed August 16, 1972, to the petitions for reconsideration of the grant in No. MC-106401 (Sub-No. 18);

(32) Joint petition of Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Deaton, Inc., Gordons Transports, Inc., and Red Line Transfer & Storage Co., Inc., protestants, filed August 18, 1972, for extraordinary relief under Rule 102 of the Commission's General Rules of Practice, embracing a request for review by the entire Commission;

and good cause appearing therefor:

It is ordered, That the late-tendered joint petition in (32) above be, and it is hereby, accepted for filing.

It is further ordered, That the petition in (32) above be, and it is hereby, rejected for the reason that the proceeding in its present posture is not the proper subject of a plea for relief directed to the entire Commission.

It is further ordered, That the petitions in (1), (2), (3), (4), (5), (6), and (7) above, collectively seeking leave to intervene, and requesting further hearing and reconsideration be, and they are hereby, denied and rejected, respectively, for the reasons (1) that the publication of the grant of authority in No. MC-94201 (Sub-No. 56) was made for the purpose of apprising the interested persons of the additional authorization to use Montgomery, Ala. as a gateway and to serve a specified point in Alabama for purposes of joinder only, which was not included in the notice of authority sought as originally published in the Federal Register issue of August 19, 1965; (2) that the petitioners' stated interests in No. MC-94201 (Sub-No. 56) are generally based either (a) on authority in conflict with the services proposed as set forth in the publication as originally made, and petitioners had ample notice and opportunity but failed to file timely protests at the time in the proceeding in which they now assert an interest or, as in the case of petitioner in (6) above, filed a timely protest and later withdrew said protest, (b) on authority acquired by them after the original publication, which authority does not conflict with the additional authorization necessitating republication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, it has not been shown to be prejudiced by the involved portion of the grant requiring republication, or (c) on authority acquired by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) to the extent it authorized service at Montgomery, Ala. and a specified point in Alabama for purpose of joinder only; and (4) that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to the authority acquired by certain of the petitioners subsequent to the original publication, there is no showing that such evidence would warrant a result different than that reached in the report and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purposes of joinder only.

It is further ordered, That in view of the action taken in the next preceding paragraph, the motion in (8) above be, and it is hereby, overruled.

It is further ordered, That the proceeding in No. MC-111231 (Sub-No. 67), be, and it is hereby, reopened for reconsideration on the present record.

It is further ordered, That the petitions in (9) and (11) through (22) above, be, and they are hereby, denied, for the reasons that the findings of Division 1, in its report and order of December 30, 1971, reported at 114 M.C.C. 571, in Nos. MC-1124 (Sub-No. 206), MC-2229 (Sub-No. 132), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 5), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), are in accordance with the evidence and the applicable law and that no sufficient or proper cause appears for reopening the proceeding for reconsideration or further hearing.

It is further ordered, That, unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56) and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grants of authority made in the report and order entered herein on December 30, 1971, shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

JOSEPH M. HARRINGTON,
Acting Secretary.

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

APPENDIX D

Transcript of hearing before Hon. John E. Miller, United States District Judge, on November 1, 1972.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC.; ET AL	:	
VS.	:	FS-72-C-05
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION and JOHNSON MOTOR LINES, INC.; ET AL	:	

Before:

HONORABLE JOHN E. MILLER

Senior District Judge

Fort Smith, Arkansas.
November 1, 1972.
9:30 a.m.

APPEARANCES:

REPRESENTING THE PLAINTIFFS:

Thomas Harper, Esq.
Don A. Smith, Esq.
Harper, Young & Smith
Postoffice Box 43
Fort Smith, Arkansas. 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee. 38138

APPEARANCES, CON'T.:

REPRESENTING THE PLAINTIFFS: (Con't.)

Phineas Stevens, Esq.
Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 22567
Jackson, Mississippi. 39205

Drew L. Carraway, Esq.
Rice, Carpenter & Carraway
1111 E Street, N.W., Suite 618
Washington, D.C. 20004

REPRESENTING THE DEFENDANTS, UNITED STATES and ICC

Bethel B. Larey, Esq.
United States Attorney
Post Office Box 1524
Port Smith, Arkansas. 72901
By Robert Johnson
Assistant United States Attorney

REPRESENTING THE DEFENDANT CARRIERS:

Robert L. Jones, Jr.
Jones, Gilbreath & Jones
Merchants Nat'l. Bank Building
Port Smith, Arkansas. 72901

Courts Oulahan, Esq.
400 Hill Building
839 - 17th Street, N.W.
Washington, D.C. 20006

Maurice P. Bishop, Esq.
Bishop & Carlton
325-329 Frank Nelson Building
Birmingtom, Alabama. 35203

Jerry C. Prestridge, Esq.
Clark, Thomas, Harris, Denius & Winters
12th Floor Capital National Bank Building
Austin, Texas. 78767

C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing on Temporary Restraining Order before Honorable John E. Miller at 9:30 o'clock a.m. on the 1st day of November, 1972, at Fort Smith, Arkansas; that the attorneys present and participating are as heretofore set out; that during said Hearing the following evidence was introduced and proceedings were had in connection therewith, towit:

PROCEEDINGS

9:30 a.m. o'clock. November 1, 1972.

Before the Court.

MARSHAL. Everyone will rise. (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

THE COURT. Now, gentlemen, this is the day that was specifically set for on the application of plaintiff for a temporary restraining order. Since that time in the interest of time, in the interim time there has been some others matters developed and the Court has before it now the matters, other matters that has not been determined. That is the application for or the Motion of certain interventions. Let me get my papers straightened out here.

THE CLERK. I have several other exhibits here just as soon as I can get a file mark on them.

THE COURT. What are they?

THE CLERK. Affidavits and ---

THE COURT. That is all right. I feel like some understanding should be reached about

the Motion of the Lorch Westway Corporation and other shippers to intervene here. I have given that some consideration, some myself but I do not believe that I have any briefs except -- I don't believe I have any briefs on that question at all. Mr. Harper, you did not file any, did you?

MR. SMITH. Yes, Your Honor, we filed a brief in opposition to the Motion to Intervene on behalf of all of the plaintiffs. That was filed on Monday.

MR. JONES. If it please the Court I filed a brief this morning on behalf of the shippers.

THE COURT. I know you did. I believe I have it in here.

MR. HARPER. If the Court please, may I present the out-of-town counsel for the plaintiffs?

THE COURT. Yes, sir.

MR. HARPER. This is Mr. Phineas Stevens of the Mississippi bar. Mr. Robert E. Joyner of the Memphis, Tennessee, bar.

THE COURT. I have met those gentlemen and the proper order will be entered to allow them to represent their clients in this case.

MR. JONES. On behalf of the defendants I would like to present out-of-town counsel for the defendants. Mr. Donald E. Cross, representing Johnson Motor Lines; Mr. Jerry C. Prestridge, representing, Austin, Texas, representing Red-Ball Motor Freight; Mr. Courts Oulahan of Washington, D.C., representing the shippers; and Mr. Maurice F. Bishop, Birmingham, Alabama, representing Bowman Transportation.

THE COURT. The proper order will be entered and we are glad to have you, the proper orders for your representation in this case. Now, going to this question of the application of Lorch Westway Corporation, as I say now I have Mr. Jones brief that was submitted this morning in opposition; yesterday the plaintiff presented a brief of October 31st in opposition to intervention, and also filed certain exhibits and this morning Mr. Jones submitted a brief in support of the petition. Now, I have not had time, gentlemen, just to be prefectly frank with you I have not had time to consider that question that I think ought to be considered. I am, I think, entirely familiar with the applicable statutes. There are some other

things in this case that I think ought to beconsidered. There are several decisions that I have not read that are applicable and most of them apparently in favor of admitting them under that provision of the statute showing an interest in the outcome of the proceeding and that may be true, but I have got to take a day or two to dispose of that Motion but at the same time since you are all here if anyone desires to make any statement or any argument on the matter I would be glad to hear it because it would help me in disposing of it within the next day or two and then we will take up the question of whether or not a temporary restraining order should be entered. Is that satisfactory to you all, now?

MR. JONES. Yes, Your Honor.

THE COURT. We might have to try it piecemeal but this case somebody ought to cut it up in to pieces several years ago.

MR. JONES. May it please the Court, Mr. Oulahan, representing the shippers, would like to make a brief argument.

THE COURT. I can hear him right now.

MR. CULAHAN. May it please the Court, Your Honor, we are asking intervention rights here under 28 U.S.C. Section 2323 and Rule 24 A 1 of the Federal Rules of Civil Procedure. We are not asking permissive intervention nor are we asking intervention under Rule 23 as a Class Action. We are not here as a Class, we are here because we are a party before the Commission and I might say, Your Honor, that the case cited by our opponents in the brief filed with you, which is Sprock against the United States, holds that we have a right to be here. I am sure it was a mistake but if Your Honor will take a look at the page before the quotation in their brief you will find that Justice Brandies said that the shippers in that case had to right to intervene in the Commission proceeding and by that intervention being granted to them they had a right to intervene in the District Court proceeding. What Justice Brandies in the portion quoted by my colleagues was saying was that the shippers had no independant right to go to the Supreme Court where the applicants, that is, the carriers involved were not going up to

to the Supreme Court and that is the holding point, Your Honor.

THE COURT. I glanced at that case yesterday but I will look at it more thoroughly.

MR. O'BRIEN CONTINUES: Now, the important point, Your Honor, is that the third paragraph of Section 2323 of Title 28 under which we are coming in does say corporations interested in the controversy or the question before the ICC, or in any action commenced under the aforesaid, as we have here, may intervene. As Your Honor has seen from our memorandum in the Brotherhood of Railroad Trainmen in 1947 the Supreme Court the Chief Justice held that the statute involving intervention means that not that the District Court has discretion but if the intervenor wants to come in and he is a party in the ICC proceeding he has a right to intervene, and, Your Honor, that was squarely held in Salem Transportation Company which we cited to you in 1967 before the Southern District of New York. In Salem, Your Honor, the District Court went ahead and using Brotherhood said the ---

THE COURT. You are talking now about the case you cited in your brief?

MR. OULAHAN. Yes, sir. The important case we would like Your Honor to really look at is United Transport against United States which was a case just across the border in the Western District of Oklahoma in 1962. That case holds that a shipper who intervened after the hearing before the ICC, after the report by the Hearing Examiner, has a right to be a party in the District Court of review action and that is exactly our position. This is the point which the protestants are using that we did not participate in the hearings, that we are somewhat a Johnny-come-lately, while United Transport is an answer to that because an intervention was allowed of right by the District Court in Oklahoma to shippers who were in exactly the same position as we were. And we have also cited Your Honor Frozen Foods Express which is a recent decision in the Western District of Texas on intervention of right by Judge Seple and other authorities. Now, Your Honor, we ought to be here because we are the principal reason why the Commission found in favor of the three defendants, the carriers. As Your Honor has read in the Commission decision it

was lack of service to us that was responsible for the reversal by the Commission of what the Hearing Examiners had held and that is the prindipal issue we have here, the plaintiff has in three places in its complaint cited us out intervention and our interest as being some kind of undue prejudice by the Commission. Well, Your Honor, we ought to have a right to be here to protect ourselves and we believe we can make a contribution to the Court. Now, Your Honor, the forty-one shippers we are talking about are from all over the United States. They come from the New England area, the Mid-Atlantic area, the Carolinas and the Southwest that represent a broad range of products, everything from Olincraft Industries which makes paoer products and ships via Johnson the ingredients that go in to the paper products to the Ethyl Corporation which ships chemicals; we are a representive cross-section, Your Honor, of the traffic that was involved in the Commission proceedings and we believe that we can represent to this Court in this proceeding not only in the TRO but in the trial on the merits and we can make a contribution to persuade

the Court that the TRO should not be granted and it is a matter of right and the substantial evidence of record, the Commissions' actions ought to be affirmed. Now, we are not in here to create delay. We will coordinate our efforts as we did before the Commission with Johnson's counsel, if necessary we can submit or join in briefs together. Johnson cannot represent us, we have an interest that is different from Johnson's. That interest however is allied with Johnson because we believe Johnson can give us the kind of service we want. And, Your Horor, if the TRO is entered we are just going to be sitting here not getting that service. Among the affidavits that you have is one from Mr. Sloan who is the Traffic Manager for Johnson who states under oath that he is still getting complaints from the shippers. It is not a situation that has changed a bit and we believe that we would be injured by any kind of delay that would put in to effect the certificate granted to Johnson by the Commission. Thank you, sir.

THE COURT. All right, Mr. Oulahan, as stated now I would be glad to hear anybody

else on the question of intervention; then I want to take up this question of Temporary Restraining Order. Mr. Oulahan has covered his and has had something to say about that which is perfectly all right because I want to carry these things along and I imagine, Mr. Harper, since you -- or Mr. Smith -- since you are the one that is asking for the entry of Temporary Restraining Order I expect I had better listen to you first.

MR. HARPER. I will leave that to Mr. Smith. As Your Honor knows I have just recently have been out of the office --

THE COURT. I do know that you have not been in your office -

MR. HARPER. And I am not too familiar with this particular case.

THE COURT. You are not entirely by yourself on that but I will be glad to hear from you. Let me ask you just a question before we go in to that. Now, Bowman Transportation and Johnson and Red Ball are in Court in opposition to that as well as -- I am treating your clients as

being ---

MR. OULAHAN. Thank you.

THE COURT. I am treating your clients, I am considering your clients right along with one of those protesting, they are among those, in opposition to the Temporary Restraining Order. Now, who else is here on that particular question?

MR. JOHNSON. We are representing the ICC, Your Honor.

THE COURT. I think I have the rest of these spotted all right. You know that rather insenable order I entered there about when this case was filed - that was because of the lack of communication. I was getting ready to have a Hearing on that matter and Mr. Johnson had got some garbled news and so did I and I could not understand it so I just entered that order so that no body else would understand it, I wanted to be as mystic about it as everybody else. Now, Mr. Smith.

MR. SMITH. Very well, Your Honor --

THE COURT. What did you say you had there you had there this morning?

THE CLERK. Sir?

THE COURT. What did you say you had there this morning?

THE CLERK. The plaintiffs filed affidavits this morning. -

THE COURT. I know that.

THE CLERK. Then this morning before we came in to Court Mr. Jones filed a brief, memorandum brief of intervening defendant, Bowman Transportation, and also an affidavit --

THE COURT. Does anybody represent Red Ball?

MR. PRESTRIDGE. Yes, sir.

THE COURT. Have you filed any affidavit or any brief in opposition to that?

MR. PRESTRIDGE. Yes, sir. I filed affidavits yesterday morning.

THE COURT. Well, I have not gotten them yet.

MR. PRESTRIDGE. I filed them with the Clerk. I say yesterday morning, I think it was yesterday afternoon.

THE COURT. That was proper.

MR. PRESTRIDGE. And served Mr. Smith.

MR. SMITH. If the Court please ---

MR. JONES. Before we begin what was that that you were referring to that you just filed?

MR. SMITH. In the course of stating the Arkansas Best authority, an affidavit, one was mis-stapled, it was someone elses' affidavit and I substituted the correct one, the Arkansas-Best affidavits by Gary Bronson attesting to their authorities and I think you have the correct copies now.

MR. JONES. Thank you.

MR. SMITH. If the Court please I think in an orderly course I would move the introduction of the affidavit that we have filed with the Clerk in support of our Motion for the Temporary Restraining Order.

THE COURT. All right.

MR. SMITH. Those will be the affidavits of Gary D. Bronson on behalf of Arkansas-Best Freight System, Inc.; John M. Records on behalf of Yellow Freight Sustem, Inc.; James W. Connor on behalf of Roadway Express, Inc, and Roadway Express, Inc., of Mississippi; Frank G. Campbell on behalf of Campbell 66 Express, Inc.; William F. Goodwin on behalf of Gordon Transports, Inc.; H.M. Kirk on behalf of ET & WNC Transportation

Company; J. Montague Williams on behalf of Mercury Motors, Inc.; L.D. Davis on behalf of Red Line Transfer and Storage Company, Inc.; and Clarence Levi on bahalf of Mercury Freight Lines, Inc.; all plaintiffs in this proceeding. I think it proper at this time, Your Honor, to give a brief summary of the events that have transpired and cultimating in this particular hearing here today. The actions which were commenced before the Interstate Commerce Commission were commenced back in 1965. Extensive hearings were held before what are now referred to as Administrative Law Judges and then Hearing Examiners and we have attached to our complaint a copy of their Report and Order --

THE COURT. Who were the original plaintiffs when this case was instituted back in 1965; do you recall?

MR. SMITH. The applicants in this proceeding --

THE COURT. The applicants is what I meant to say.

MR. SMITH. There were ten of them.

THE COURT. Then that is all right.

MR. SMITH. They included Roadway Express,

Inc., Red Ball Motor Freight, Inc., Deton Truck Line, then it was re-entitled Deten, Inc., Floyd and Beasley Transfer Company ---

THE COURT. I have got them now.

MR. SMITH. They are all listed on the first page of the Examiners Report.

THE COURT. Yes.

MR. SMITH. Subsequently this matter after several pleadings were filed a decision was handed down by Division One and served January 24, 1972, reversing in part the recommended order of the Hearing Examiners ; they had recommended the denial of all of the applications and the Commissions Division One would issue Certificates of Authority to Johnson, Bowman and Red-Ball, intevenors in this proceeding. Subsequently pleadings were filed and Division One acting as an Appellate Division on September 1, 1972, entered an Order, the effect of which as far as this proceeding is concerned would issue those Certificates. That was served on September 6, 1972. Thereafter certain of the now plaintiffs in this proceeding filed with the Commission as allowed by law their application to declare this matter of transportation im-

portance and to gain consideration by the full Commession.

THE COURT. What is that you stated now?

MR. SMITH. Some of the plaintiffs after the issuance of the September 6th Order filed their Petition for a Determination and Announcement that the proceedings involved and the issue of general transportation importance - we mentioned this in our complaint because it was pending at that time ---

THE COURT. What was the purpose of that?

MR. SMITH. This is allowed by the Statute and the Rules of the Commission and the Commission at that time, the whole Commission can treat this matter as general transportation importance and review the entire proceedings or those segments that it desires to review.

THE COURT. All right.

MR. SMITH. The Commission by Order dated October 2, 1972, and served October 6, 1972, denied those Petitions and therefore did not consider it the matter of general transportation importance. Now, after the September 6th Order was entered by the Commission contact was made by a representive of the plaintiffs,

Mr. William O. Turney, an attorney in Washington, D.C. He regularly represents Roadway Express, Inc., and Roadway Express, Inc., of Mississippi. The office of the general counsel of the Interstate Commerce Commission was sent a letter advising the Commission that litigation would be instituted in opposition to the issuance of the Certificates to Bowman and Johnson and Red Ball. On the 13th day of September Betty Jo Cristian, an associate general counsel of the Interstate Commerce Commission, sent Mr. Turney a letter and she requested that - well, she advised that the ICC would withhold the issuance of those Certificates until October 6th pending the filing af the contemplated law suit by these plaintiffs, and as you know and as the file reflects on October 4, 1972, within the time limit the complaint was filed in which we requested that a stay of the issuance of those Orders be granted. Prior to the filing of that complaint we had advised Mrs. Christain that we were going to file it in this Court and we told her that we would file it during the week of October 2nd. At that point in time our representive stated that she was going to allow

the representives of Bowman, Johnson and Redball this information and notified them that the suit was going to be filed. We filed the suit and as the Court has referred to in the preliminary statement the United States Attorneys' Office for the Western District of Arkansas appeared pursuant to a notification that the suit had been filed and advised this Court that it would not be necessary to issue a Temporary Restraining Order and that the Commission would voluntarily withhold the issuance of those Certificates. In the meantime Mr. Donald Cross representing Johnson Motors had wired the Court and the Clerk asking that he be notified at such time when the temporary restraining order hearing would be heard. Now, on October 18, 1972, the Commission sent a notice to all parties of record in these proceedings that the Court action had been instituted. Thereafter at the request of Mr. Cross and through discussion with the Interstate Commerce Commission this Court entered the Order asking that this matter be heard today. Now, on behalf of all the plaintiffs we appear in support of this Court issueing the Temporary Restraining Order. We have filed

with the Court the affidavits of various representives of the plaintiffs and collectively these plaintiffs are in opposition to all of the issuance of the certificates of all these carriers, Johnson, Bowman and Red Ball. We have also been favored with affidavits from Johnson Motor Lines, Red Ball, and this morning we received an affidavit from Bowman. No one has contested the jurisdiction in so far as the issuance of the Temporary Restraining Order and I do not think the record need be burdened by a discussion of the jurisdiction. We submit to the Court that the consideration to be given here is whether or not irreparable damage will occur to the plaintiffs if the certificates are issued by the Interstate Commerce Commission while this case is pending before this Court and a final determination on the merits has not been made. There are provisions within the Statutes and the Court certainly is aware of these Statutes which allows this Court at this time to enter a Temporary Restraining Order upon the showing of irreparable damage. I think the Court since you have not had an opportunity to read the affidavits can read the affidavits

and you will find essentially these factors disclosed in these verified statements; first, that tese carriers that are plaintiffs who are asking for the Temporary Restraining Order are presently carriers that are serving the public throughout the entire territory that could be served by Bowman, Johnson and Red Ball if these certificates were issued. As such the public is not being denied service because service already exists for those people as a result of the service performed by these parties, these plaintiffs and others. Secondly, you will find that these are carriers that their entire livelihood is based upon offering service to the public. They have purchased equipment, erected terminals, hired employees, made their own investigations concering highway conditions and the best and most feasible routes to follows and they are performing the service for the public in the area encompassed by these proposed Grants of Authority. These affidavits also reveal to the Court in varying amounts of statistics that if this Temporary Restraining Order is not granted serious diversion of traffic will occur to the plaintiffs and other carriers. Now, the

effect of the diversion of traffic does not simply go to a lessening of income because it also would result in a curtailment of employment, lack of purchase of future equipment, expansion of terminal facilities and the possibility of reducing schedules so that the lack of income could be made up of the curtailment of services to the public. So rather than this service being hurt by the grant of the Temporar Restraining Order it actually will be helped and encouraged if the Court were to grant the Temporary Restraining Order. I noticed in the affidavits submitted by Red Ball and also by Johnson that this matter is actually covered in those affidavits. Both Red Ball and Johnson state to the Court that they now are performing a two-line service from all of the areas involved in these applications but if the Temporary Restraining Order is not entered and the certificates are permitted to be issued they will then introduce a single line service. Johnson, who interlines with the plaintiffs and other carriers, contemplates gross operating revenues for a six-month period of almost one million dollars. Now, where is that revenue

going to come from? It is going to come from the pockets of the plaintiffs and the other carriers who are now presently rendering this service to the public from that area. The affidavit of Red Ball states that they are presently interlining with T.I.M.E.-D.C., Inc.; Johnson with Bowman with Gordon with Central and I am naming all of the parties to this litigation, but if this certificate is allowed to be issued then they are not going to interline with these carriers any more. In other words the effect of the granting of the Temporary Restraining Order is a preservation of the status quo or the current conditions under which these carriers are now operating. It affords no detriment to these three carriers. It affords an opportunity for this service to be rendered to the public as it is now being rendered and it also gives everyone an opportunity to consider this case on its merits. One other consideration that the Courts have given in proceedings of this nature is the possibility of success the ultimate decision to be reached by the Court. I do not intend to argue the merits of this case. I do not think

it is appropriate in this proceeding and I would not attempt to do so. I would only call the Courts' attention to the fact that in our complaint we have enumerated what we believe to be allegations to show that the merits are certainly in question and I think the Court can take in to consideration one basis factor, the Hearing Examiners who were there, who heard the testimony denied all of the applications; the Division reversed those Hearing Examiners on three certificates, Bowman, Johnson and Red Ball. So within the Interstate Commerce Commission there is a question as to whether or not these certificates should have been issued by the personel hearing the cases and deciding them. We feel like that we have met the necessary criteria for establishing that a Temporary Restraining Order should be entered; first, through these affidavits we have shown that there will be irreparable injury; secondly, we have pointed out and basically it has been admitted that no injury can occur to these three who would receive these certificates because they do not have that authority now. If they are allowed to institute those operations by the

denial of our request for a Temporary Restraining Order and then subsequently this matter was reversed so that they would not have the issuance of these certificates greater detriment could occur to them. We have prepared and will submit to the Court authorities which adequately deal with the issuance of a Temporary Restraining Order. We would invite the Courts attention to the case of Westinghouse Electric Corporation verus Singer Sewing Machine Company, a Seventh Circuit case, and Interstate Commerce Commission verus Hudson Transportation Company, a Southern District of New York case. Also would refer the Court to the Benson Hotel Corporation verus Woods case, an Eighth Circuit decision in 1968. We will put this in final form and submit it to the Court, but I think that the facts as presented by the evidence and as contained in the record before the Interstate Commerce Commission and alluded to in the pleadings before this Court clearly establish that at this time a Temporary Restraining Order should be granted. May I have one second, Your Honor?

THE COURT. Yes.

(Mr. Smith confers with other attorneys.)

MR. SMITH. In conclusion, Your Honor, I would advise the Court this case has been pending for seven years. There is no immediate urgency for the institution of the service as a result of the issuance of these certificates. I think possibly though arguments and/or affidavits that have been introduced before the Court the Court might have the impression this is an argument between giant motor carriers. There are some motor carriers in this proceeding that would be considered large corporations; on the other hand there are participants in this proceeding that are exceedingly small and I would all the Courts attention to Holloway Motor Lines, Red Line Transfer and Storage, ET & WNC and some of these others; and I would also refer the Court to pages 26 and 27 of the Examiners Report in which the Examiners after hearing the testimony in this proceeding makes the statement that Holloway has subject to diversion seventy-one percent of the tonnage that it handles; that Red Line would be put out of business and, interestingly enough the Division does not comment and that has not been chanllenged by these three who seek the grant of these applications.

So I think for the preservation of the national transportation policy as it exists today the Temporary Restraining Order should be issued and this matter be fully litigated before the assembled Three Judge Court. Thank you, Your Honor.

THE COURT. All right.

MR. JOHNSON. If it please the Court, I have been asked by the Interstate Commerce Commission to appear on its behalf. The United States through the Justice Department has not at this time decided what position they will take in the proceedings, so my remarks will be confined to the Interstate Commerce Commission and for the most part the Interstate Commerce Commission will defer to the intervening intervenors and as to the arguments I would ask merely to set forth what the Interstate Commerce Commission believes to be the grounds for a Temporary Restraining Order; first, have the petitioners shown that they are likely to succeed on the merits, and intertwined with that is the persumption of the validity of the regulating orders, to the presumption that the Interstate Commerce Commission is correct and its orders

must be regarded in order that if the petitioners should succeed in having a Temporary Restraining Order issued at this time. The second, will they be irreparably damaged, and third, will it harm other parties, and, fourth, where lies the public interest. We get these where they are most simply stated from Virginia Petroleum Jobbers against Federal Power Commission, 259 Federal Second, 921 to 925. With that short elemental statement of law I am sure the Court is very familiar with I will defer to the intervenors. Thank you.

THE COURT. All right.

MR. CROSS. If the Court please, I am Donald E. Cross, representing intervening defendants Johnson Motor Lines, Inc. This matter is of such importance to each of the intervening defendants, Your Honor, that each of us would like to be heard briefly.

THE COURT. That will be very well, you may do that.

MR. CROSS. I will go first and my colleagues will follow.

THE COURT. That is very well. Go right ahead.

MR. CROSS. Johnson was the first of the applicants to file their application before the Commission, those applicants being a group of nine carriers who were seeking related but not the same service and that is something the Court must bear in mind. Each of these grants of authority authorize somewhat different points and territories to be served and it is for that reason, Your Honor, that the sixteen and now seventeen plaintiffs you will find a great deal of diversion of opinion on their part as to which of these applications are opposed. For example only eight of these plaintiffs oppose the Johnson application before the Commission --

THE COURT. I noticed that.

MR. CROSS. Actually there is nine now, Roadway has intervened here as a plaintiff only yesterday or the day before was also one of those opposing Johnsons' application. You will find the same thing true with the other applicants and now potential certificate holders coming before you. In short we do not have some eighteen plaintiffs saying that they are all going to be hurt by any one of these applications.

In other words if there is harm to them at all and I seriously dispute that, in any event I do not think the harm irreparable within the meaning of the Statute, it is diverged among this group of people in such a way as you do not get the fullcompact of nineteen plaintiffs saying they are all going to be hurt by each of these applicants. It has been attacked you will find that they proceed collectively against all three as though the same impact was from each of us. But that is not the case. I do not want to take the Court's time today to spell out all of these varying interests. I think it is sufficient for this purpose to show that the interest is not the same as to each of the applicants and certainly not the same as to the Johnson application.

THE COURT. I detected that from the little study that I have made. That is the thing that causes me more trouble, that is, contemplated trouble than any other one issue in the case is separating whose who and why and so forth and so on --

MR. CROSS. If Your Honor please, prehaps this will -- this thing that I will next cover

runs through all of them. When you read the other plaintiffs affidavits who have the burden of establishing irreparable harm the main element I think this Court must look to you will find that they complain basically of new competition which will divert traffic from them, divert shipments from them. Now, the case that which I have taken the priviledge of referring to is the Frozen Foods Express verus United States, Western District of Texas, June 28, 1972, where Judge Suple, United States District Judge, denied a Temporary Restraining Order simliar to the ones or almost identical to the ones that the plaintiffs seek here on the grounds primarily, and I quote "the Court finds that the only injury plaintiffs might suffer by a denial of a stay would be increased competition which in the Interstate Commerce Commissions opinion presumptively valid is in the public interest. Such injury of anycannot be said to be irreparable." End of quote. If the Court please ---

THE COURT. What is the name of that case?

MR. CROSS. I have a copy here for the Court. It is Frozen Foods Express, Inc.

THE COURT. I have it in my library. Is it cited in your brief?

MR. CROSS. No, that is not cited in my brief and it was for that reason that I thought that I had better give the Court copies of it.

THE COURT. That is all right.

(At this time Mr. Cross hands papers to the Court.)

MR. CROSS. If Your Honor please, the Interstate Commerce Commission is the Agency of Congress that must look to this transportation picture. In this situation it consulted the applications of ten large carriers and held a hundred and forty-nine days of hearings and is probably one of the largest cases of this type that the Commission has ever considered. It has considered it absolutely fairly. Pleadings briefed, briefs that are mammoth and with that consideration it has deemed to grant the applications of three of the ten. They did not grant all ten of the applications, there were three and the basic grounds for that grant is that the existing transportation system composed of these plaintiffs had not been rendering these adequate service to the public and that the public needed the transportation

of the three successful applicants. Now, the plaintiffs have told you that, one, they are serving the public today but they have been found by this Agency not to be serving it adequately and it is for that very reason that the Commission wants to issue the certificates in this case. No. Two, they tell you that this new competition will divert traffic from them. First I would say that based on the Frozen Foods case and others that Mr. Bishop will cite to the Court the mere possible diversion of traffic, loss of business by these plaintiffs and the increased competition they would receive from these new certificates is not a irreparable damage within the meaning of the Statute. There are two cases holding that. So that is all that they have tried to show this Court their damage would amount to. With that gone they do not need a primary element that this Court must find specifically that they would suffer irreparable damage. But just for a moment, Your Honor, assume for purposes of argument that the damage to them, the potential loss of business as they say and the new competition, assuming for purposes of argument that it is on - that

this Court should consider, the Court must also balance that harm against the harm to the intervening defendants before you here. I have submitted the affidavit of Mr. Sloan setting forth in detail the steps taken by Johnson to prepare itself to institute the service that the Commission has found to be needed. Using one figure alone there is some two hundred or two million dollars of new equipment which has been contracted to purchase; they have taken innumerable other steps preparatory to starting operations. If this Court restrains the Commissions issuance of the certificates those steps will be for naught. They are not the kind of things that Johnson can go back and recoup. They would have to be done over again in the event and we think the likely event that this Court confirms the Commission on the merits. That is I submit irreparable damage, that type of loss and waste that would incur were the Court to restrain the issuance of these certificates. Now, cousel for plaintiffs points to Johnsons' affidavit and says "well, we project revenue as a result of operations under the new certificate." If you will read Mr. Sloan's affidavit carefully,

Your Honor, you will find that not one dollar of that projected increased revenue will be diverted from any of the plaintiffs in this case. It is business that Johnson is handling today with carriers other than the ones complaining to this Court and not from these plaintiffs. That is significient. And lastly, Your Honor, Mr. Sloan's affidavit contains some assistance of these plaintiffs. Again assuming, and I go back to my original point that new competition and diversion of traffic to these plaintiffs is not irreparable harm within the meaning of the Statute. But assuming argumentatio that it may be so considered by the Court Mr. Sloan's affidavit contains financial statistics of some of the plaintiffs, namely the ones opposing Johnson, it shows for example - and we have affidavits here from Gordon Transports today, Gordon's being one of the plaintiffs opposing Johnson, Gordon's had net operating revenues in 1971 of forty-eight million dollars, had a net income of almost two million dollars, an operating ration of ninety two percent, very favorable in the motor carrier industry. Campbell, another one of the plaintiffs opposing Johnson,

had operating revenues in 1971 of twenty-four million dollars, an operating ratio of ninety-two point five (92.5), very favorable --

THE COURT. What do you mean by "operating ratio"?

MR. CROSS. That is the ratio of the carrier's total sales, revenues, to total expenses; and in the motor carrier industry as we point out in the affidavit that ratio is said to be healthy for a motor carrier at about ninety-three (93) and the two ratios for two of the plaintiffs that I read to you are less than ninety-three (93), in other words in a healthy position. I will not go into detail, all the other figures are there, except to point out that assuming argumentatio only that new competition is a factor that this Court can consider as irreparable damage these carriers are more than able financially to withstand increased competition whcih the Interstate Commerce Commission has said is needed in the public interest. I want to mention to the Court that when Mr. Sloan's affidavit was prepared Railway Express was not a plaintiff. I have worked up

the financial statistics of Readway Express just overnight after having learned that they were in the case just to point out to the Court Roadway had net operating revenue in 1971 of two hundred ninety eight million dollars ($298,000,000.00); net income of eighteen million ($18,000,000.00), almost eighteen and a half million ($18,500,000.00); of all the plaintiffs this is obviously the strongest and assuming argumentatio new competition constitutes irreparable damage this carrier could well withstand it. That will conclude my remarks, Your Honor.

THE COURT. Thank you.

MR. CROSS. Thank you.

MR. SMITH. Mr. Drew L. Carraway of Washington arrived late and I would like to introduce him to the Court and ask that he be allowed to participate as one of the plaintiffs, as one of the attorneys for the plaintiffs.

THE COURT. I intended to remark about that but Mr. Cross had me mesmerized and I overlooked that. Glad to have you, Mr. Carraway. All right, the next one.

MR. BISHOP. I am Maurice F. Bishop and I am appearing for Bowman Transportation, Inc., resisting the application for a Motion for a Temporary Restraining Order which we will refer to for expediency as a TRO. As has previously been suggested this case actually has its beginning in July of 1965 when the series of ten applications was filed with the Commission. I think it might be well and perhaps important in consideration of whether to issue a TRO to note that the hearings in this case commenced on March 21, 1966, and it has been appropriately described by the Commissio as being one of the longest and the most thorough considered cases in the Interstate Commerce Commission history. Suffice to say there were 933 public witnesses who appeared and testified to an impelling need for the various service proposals inherent in the application. The hearings continued almost without rest for 147 trial days. The transcript of testimony in this proceeding covers 23,446 pages -- 433, I am sorry. There were 1989 exhibits, some composed of hundreds of pages that were introduced and considered in the various administrative process and procedure that was involved in this or these

cases. Following all of that series of extended hearings the briefs, exhaustive briefs were filed to the Examiners in the case by all of the parties or on behalf of all of them. After the briefs were filed to the Examiners they issued or suggested a recommended Report or Order and then exceptions were filed to the recommended Report and Order of the Examiners and replies to those exceptions. Then Division One of the Commission issued what I respectfully submit is an Answer that would not be questioned as prehaps the most exhaustive and certainly one of the best considered and reasoned Orders that has ever been issued in Commission history, containing 234 pages which the plaintiffs with commendable candor portions of which the plaintiffs stated in their Petition for Reconsideration they had not read or considered at the time they filed their Petition for Reconsideration.

THE COURT. Are the pages in that report -- they are not readable in my eyes and I cannot find anything that is sufficiently magnified so that ---

MR. BISHOP. We will get those blown up for you and make them available to you for your

inspection. As a matter of fact we will file with theCourt at this time what all of the parties -- we will file with the Court a blown-up copy of that Appendix for the working members of the Court. That is an exact reproduction, Your Honor, of the portion to which you have referred and that is the Appendix to the Order of the Division, Appendix C, beginning on page 636 and continuing through ---

THE COURT. That is right.

MR. BISHOP. 756.

THE COURT. All right, I am glad to have that.

MR. BISHOP CONTINUES: Yes, sir. Those Petitions for Reconsideration were filed and replies to those Petitions for Reconsideration were filed and then the Division issued their -- Division One as an Appellate Division issued their Order denying the Petition for Reconsideration. Then the plaintiffs filed before the Commission Petitions for Declaration of General Transportation Importance and that was denied. I mention that procedure simply for the purpose of illustrating and emphasizing the fact that the very issue that is before Your Honor this morning

already has been exhaustively considered by the Administrative Agency which has the expertise in the field and to which Congress has delegated and charged with the responsibility of making the factual determination of the issue. Now, it has been argued this morning from a factual standpoint and as I understand from a hurried look at the affidavits and as I certainly understand from the very able presentation by my friend Don Smith this morning the issue involved is that these plaintiffs now say that if these Orders become effective we have a potential diversion or loss of traffic which we in which we are participating today to some extent. That was the principal ground of opposition. There were two grounds of opposition from the plaintiffs that runs throughout this record and that is exhaustively considered by the Commission. The first was that there was actually no need because they contended that a satisfactory service presently existed, either single line or in interchange. that is where the one carrier will transport the goods for a part of the shipment and another carrier will then take over the shipment

and transport it beyond, interling freight or interlining equipment. They said, Number One, that under the Act there is no public need, and, secondly, that if a public need does exist for the service that it would have an adverse or serious effect upon the existing carriers. That was their thrust of their entire opposition throughout the proceedings. Now, that very issue - and, incidently, that is the issue they now present to the Court with the additional burden that they must show now not that they would be adversely affected but they must now satisfy this Court beyond any reasonable doubt to the Courts' reasonable satisfaction that irreparable damage would result to the plaintiffs. With that additional burden imposed by virtue of the Statute and under the TRO that issue has already been determined a minimum of four times by the Administrative Agency. It has already been briefed four times exhaustively. It was briefed on the original briefs to the Examiners. And some of those briefs contained three and four hundred pages. It was briefed on the Exceptions and replies thereto to the Examiners Recommended Report and Order. It was briefed

on the Petitions for Reconsideration and replies thereto. And in so far as Bowman Transportation and the other successful plaintiffs are concerned most of those it was briefed on the supplemental exceptions Motions to file and the replies thereto. Now, what Your Honor is now called upon to determine were briefed and exhaustively considered by the Commission and I might add for emphasis that the Report of the Commission was a unanimous decision that there was no serious adverse effect on the protestants, the plaintiffs here. As a matter of fact the Report, the Order of the Division refers to this matter on page 114, MCC page 610, and that is a portion --- the top of page 611, and that is the portion of the Order that directs itself to the contentions made by the plaintiffs here and made by them four previous times before the Commission; three of those times as stated here as shown by the record unsuccessful. I quote that portion beginning at the bottom of page 60 "and undoubtedly granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier's services." It is also true that

the above described Grants of Authority would subject some of the protestants traffic to the possibility of diversion. That is the argument made here - with the exception of one carrier here, Holloway, however, protestants have not shown that they would be seriously adversely effected by such grants; nor does it appear that the operations of any existing Carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Citing the Liberty-Trucking, Case, "Whereas, the operations of Holloway which transports specified commodities in a limited territory may be seriously adversely effected the gains to be derived by the shipping public in general far out-weigh any adverse effect this carrier or any other protestant may experience." End of quote. Now, with respect to Holloway, as shown here, that carrier had only limited specified commodities as known. And it is critically important to note and remember that Holloway operated only between the Gadston and Birmingham territory and Kansas City; that not only had limited commodities but as noted by the Commission had limited territory in so far as the proceedings

were involved; and there is where the Commission affirmed or later determined that it would not have any serious adverse effect on the plaintiffs in this proceeding. Now, what I read you -- well, first the question; there are four questions really involved before Your Honor, that Your Honor will have to determine in this proceeding. And those it has been suggested by the United States District Attorney that those are well expressed in the Virginia Petroleum Jobbers Association case; and the citations will be furnished to you. And those four questions are these: The Court says that in those cases that the following criteria or guide lines guided, that is, where there is an application for a temporary restraining order of a final administrative decision, Number one, has the petitioner made a serious showing that it is likely to prevail on the merits of its case; on response to that as this Court well knows on the basis of its long experience that in order to overturn an Order of the Interstate Commerce Commission the burden rest on the plaintiffs ultimately to show that the Order does not contain substantial evidence and other presumptions support the Order of the Interstate Commission.

Now, there is certainly substantial evidence in this record, involving all, of all the parties and it is one of the longest and most detailed perhaps in the Commission's Motor Carriers history and we respectfully submit that it would be impossible for them to show that on TRO where all they present are affidavits of possible diversion. The second issue that the Virginia Petroleum Jobbers case proposes for the Court is, Number two, has the petitioner shown that without such it would be irreparably injured. Now, in that particular instance it is noted that issue has already been briefed and considered four times. The Commission has said in its expertise on the basis of a careful consideration of that tremendous volume of evidence and the long hearing and the multiple arguments before the Commissioner on that very issue that it has not been shown to the Commission that any serious adverse effect would be had and that in any event that the public as noted by the Commission that the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other may experience. May I digress just long enough to say this, that those are the affirmative findings of fact by the Commission. This Court knows by analogy

that when this District Court sets through a trial and makes a finding of fact that the Circuit Court of Appeals of this Circuit is not going to be behind that finding of fact, unless it is purely arbitrary or capricious; and certainly this same analogy would apply here, I don't believe this Court will go behind the findings of fact by the Interstate Commission, first that there is no serious adverse effect and any effect is farcutweighed by the substantial public hearings through out and established in this record. Now, the third issue that this Court has or the third question is, will the issuance of a stay substantially harm other parties interested in the proceedings, which is - - which averts to the proposition of the potential diversion or loss of traffic. Now, just as a matter of law, in the first place the Commission has affirmatively found, I say to you that the position of the plaintiff in that connection is factually untenable having been found by the Commission that it does not exist; and secondly, that even if it did exist that there was some potential diversion or loss of trade, that it would not judically support a TRO. Now, this Court inquires and properly, what authority do you have

for our opposition where does exist that it would not support a TRO. As noted by Mr. Cross in his argument the Frozen Food case a c has been xeroxed and handed to Your Honor is one support in that connection and is a Three-Judge decision but if you will look at the very end of that decision, as noted, you will find a copy of the single Judge order, the District Judge order with respect to the application for TRO where that principal is enunciated and applied. Now, in addition to that I would like to refer very briefly to the Court the case of Railway Express Agency against the United States, and incidentally that Supreme Court decision where the Court stated and I quote:"Further more the application, and this was an application - - -

THE COURT: Now, you are reading from the brief?

MR. OULAHAN: Yes, look at the top of page 13 for the purposes of emphasis, that is the brief of Bowman. "Further more, the application disclose no irreparable injuries to the Railway Express" and I might interpolate to say, Your Honor is familiar with the Railway Espress, a carrier, because the Commission order other than a possible loss of trade, that might be incurred if United Parcel were permitted to proceed under its authorization.

and in that case it was a Three Judge Court denying a preliminary injunction and that was the language of the Court in that case. And also in the Aero-Mayflower case, where the Court said, and again I quote: "Plaintiff's application to engoin the Commission from - - issuing a certificate of convenience and necessity in accordance with the challenged order was denied at the adversary proceeding. Since it appeared to us interlocutorily, that no prospect of irreparable injury to plaintiffs could be shown beyond a possible loss of some trade which might be suffered by plaintiffs if TEK should operate under the certificate before the case could be determined upon the merits" End of quote. So those are the decisions together with the one already suggested to support that proposition. Now, fourthly, and lastly in so far as the criteria are concerned that would gather in this Court in its considerations or issuances is whether the public interest, and that is the prevailing one, very frankly, is Number 4 realize the public interest. It is noted the Commissioner stated that the public interest lies in the approval of three of the ten applications; and that issue also was exhaustively briefed and determined. Inso

far as Bowman is concerned, Your Honor, I do not propose to discuss or consume the time of the Court this morning with discussing the factual information set out in the affidavit of Mr. Garcia Salyers, President of Bowman, except to state this: If Your Honor, will note in this Order, and Your Honor is familiar with the provision of the Interstate Commerce Act imposing upon the recipent of authority or the holder of authority a burden in addition to the benefits granted it is a two-way street; when a carrier obtains a certificate it has the benefit of providing that service but it also assumes the duty and responsibility. Bowman's affadivit shows that when the Order of Division One, following the Order of Division One granting it authority that Bowman proceeded with dispatch to get ready to provide the service that was contemplated under the grant, and let me just state in a brief summary that the affidavit of Bowman establishes that it had contacted, that it contracted to acquire and did acquire, already acquired additional equipment to dedicate to this service; that in addition to that it did not proceed without judicious and economic thought. That in its plans it obtained options on the then market to

obtain equipment. And the affidavit shows that under the options themselves that a favorable price was obtained by virtue of the option if Bowman is in position to exercise to provide the service that would result in savings of over $40,000.00 there in exercising the option alone and that Bowman has obligated itself - - that Bowman has obligated itself and invested over one and a half million dollars in equipment, and if you take the prime rate of interest alone at 6% that represents $90,000.00 per year in interest charges alone. The affidavit also sets out the cost of the new units, ten acquired, the $1,600,000.00; that it has invested one and a half million in other vehicular operations, some of which was needed in connection with this present service; and that option subject to cancellation by Bowman, if the certificate is not issued, would expire in a period of 90 days from October 1st, 1972. The other ways in which there is damage to Bowman, in economic loss to Bowman are set out in the affidavit. In closing let me say it is not of final importance and controlling importance what the damage to Bowman is going to be or what the potential loss of trade or damage to the plaintiffs might be. The

real damage lies in the public interest following a hearing that has consumed an extended period of time and also the administrative lag and I say advisedly, that judge the shipping public and the people who buy their goods at the various places and the 933 Public witnesses that are charged with maintaining an inventory and where this record shows where that inventory is not properly supplied they have to put more money into inventory at inflated prices and where small receivers of goods all over this whole territory that is involved in this proceeding testified at the greatest out-pouring of public witnesses in any motor carrier case in the history of the Commission came forward in this case; and they testified not by tens but by hundreds - that we are not receiving the service that we need, we are having to invest more and more money in inventory because our goods are not getting here on time; and that in certain instances if something is not done we are going to have to go out of business. Now, that is not the motor carrier, that is the people who testified in this proceeding, and the Commission after reviewing that said "we are going to do something about it, the time has come to do something about it; we are going to grant three

of the ten applications": and it is on the basis of that record and that interest to correct an obvious defficiency in existance that we definitely urge that this Court deny the TRO and then set the case down for hearing, finally on the merits.

MR. PRESTRIDGE: Your Honor, I will be very brief; I think all of it has been covered. I am representing Red Ball Motor Freight in opposition to the granting of the temporary Restraining Order. Along in furtherance of what Mr. Bishop has said in regard to the public interest and in light of the Court's mandates in the Virginia Petroleum Jobber's Case as to what the Court's control is and what the Court must consider in granting the TRO I prepared an affidavit on behalf of or with the cooperation of the Vice-President of Red Ball and I filed it with the Court. In the affidavit I have attempted to show and have shown, I believe, the steps and the expenditures to which Red Ball has gone since the Division Order granting the authority sought, that is money that has been spent in good faith in furtherance of its desire and willingness to operate and provide service for which Interstate Commerce Commission found that was needed. In addition, Your Honor, and I cannot emphasize this

enough as to the public interest where in lies the public interest as was dictated in the Virginia Petroleum Case, and I will also point out, Your Honor, there is some 8th Circuit opinions in Middlewest Motor Bureau vs. United States, at 433 Federal 2nd, 212, on which an application for certiorar was denied by the Supreme Court; at 402 U. S., 499, the 8th Circuit in that case quoted verbatium from the Virginia Petroleum Case as to what the Court's role is in considering a TRO and at the conclusion of that quotation the 8th Circuit said, "from these considerations" and I am quoting now: "from these considerations it is evidence that the Federal Courts must be exceedingly careful in granting extra-ordinary relief of a stay of an Agency Order." Now, in the affidavit of Red Ball we have shown, Your Honor, where we believe the public interest will be served by denial of the Temporary Restraining Order which would authorize the Institution of a single line Motor Carrier Service by Red Ball between Atlanta, Birmingham and Greenville, on the one hand, and a multitude of cities, towns and villages in the states of Texas, Louisana and Arkansas which are not served by any other motor carrier in a single line service between

those points. None of these plaintiffs, nobody else, Your Honor Red Ball would be the only single line motor carrier between Atlanta, Birmingham and Greenville on the one hand and on the other the points that are set out in appendices B, C, and D to the affidavit of Mr. McCarthy. I think, Your Honor in considering the TRO and under the mandates of the Virginia Petroleum and Middle West Bureau Cases this Court must consider the public interest. Certainly it will be tried on the merits fully but at least at the TRO stage some consideration must be given to the effect the TRO will have on the other parties, Red Ball and the public. I want to make one other observation; Mr. Smith has alluded to the fact that the Interstate Commission reversed the report and order recommended by the examiners in that case; of course that will be more fully briefed and argued on the merits, Your Honor, I am sure, but I would call your attention that the Commission as an Agency in making its' decisions is not bound by the findings or the conclusions of the examiners. Thank you, sir.

THE COURT: Mr. Prestridge, did you leave a copy of the affidavit with me or - -

MR. PRESTRIDGE: No, sir, filed it with the clerk, Mrs. Lindquist, I believe.

MR. CULAHAN: May I have five minutes to reflect with my colleagues here?

THE COURT: Yes, sir.

MR. CULAHAN: The plaintiffs and defendants are well represented today by local and national counsel, but the one thing that seems to have been missing and in particular from our fried Don Smith, are what about the public? The ICC represents the public in granting the certificate. We are here before you today, Your Honor, to protect that public interest and I just have a few words to say on that subject; taking two things out of the Virginia Petroleum Jobbers case; the first is, the reasonable likelihood of success. Forget about the TRO but lets' take a look at the long ahead. Are the plaintiffs going to prevail in this case because if there is no reasonable likelihood they are not going to fail they are not entitled to a TRO; and on that point Your Honor as we set forth in our brief which is attached to our petition to intervene which is exhibit B, at pages 42 and 49, you will find that the law is very clear and is laid down by the Supreme Court that economic

injury is no grounds for relief in a trucking case; that there is no vested right in the preservation of your competitive position when you have a certificate from the Commission and where the records shows an inadequate service, based on the evidence of public witnesses, the Supreme Court will reverse a grant of a certificate by ICC where the ICC did not pay any attention to it. Now, in the case below on this subject, Your Honor, the hearing examiners said the plaintiffs should be able to remedy the deficiencies a service which exists in this large service area. The Supreme Court in U. S. V. Dixie said that is not the law and that is what the Commission said in its' findings here. Now where lies the public interest, and my friend Don Smith has said "we are serving the public, there is going to be no irreparable harm to the public, keep things as they are." What is the status quo? Now, Your Honor, as you will have seen from the Commission's findings which are not refuted at the present moment, I went through various affidavits filed this morning, while I may have missed a couple of things in there I did not see any thing in there about refuting the evidence before the Commission about inadequate

service. The Commission at pages 596 through 600 of its' report very clearly shows inconsistent and excessive transient time, service restrictions, refusable to pick up traffic, embargos, interline difficulties at places like New Orleans because of the fact that Johnson, for example, cannot single line traffic from the northeast and southeast to the southwest area; and the result of the shippers is we are losing customers and business; we are penalized under a contract penalty clause; we cannot maintain the necessary inventories; our production schedules are disrupted; we cannot expand and in some cases we are even turning private warehouse -- indeed I know a lawyer cannot testify but I rode into town last night with a customer of a trucker which shall remain nameless and he told me that the trucker would not pick up interline traffic here and how he had to revert to using either private carriers or getting trailers tacked onto somebody business. That is precisely the kind of thing that we are talking about. And under those circumstances, Your Honor, the public interest has not been served and we believe that you should not grant a TRO. Now, my friend mentioned that in National Transportation policy - - as Your Honor knows that is set forth in

a footnote prior to 49 U.S.C., Section One.

I would like to point out that that transportation policy requires that the Commission in administrating truck traffic promote efficient service and further all of the policy is to assure adequate transportation to meet the needs of the community; and the Supreme Court in the Schaffer Case, Your Honor, 355, U. S., 83-95, implemented that and pointed out that the implementation of that policy required the Commission to evalute the needs of shippers. The Commission did not do it in that case, they did it in this case; and in making their evaluation and as a fundemental basis for their decision and a grant to these three certificate holders, particularly Johnson, they found that service was grossly inadequate. Under those circumstances, Your Honor, we believe as the shippers that a TRO should not be granted and then eventually when you hear the case on its merits we think you are going to sustain the Commission.

THE COURT: Thank you.

MR. SMITH: I would like to make a few brief rebuttal remarks and I thihk there are some other attorneys here that would like to also respond to some of the statements if the Court will allow it.

THE COURT: All right, go ahead, glad to hear anything you have to say.

BY MR. DON SMITH:

Now, I think at the outset in response to some of these arguments, the eloquent speeches have been made and they have overlooked the facts that if we agreed with the Commission's decisions in its' findings this lawsuit would never have been instituted; and it is for that reason that we are anxious to have the grant of the TRO. As we have stated in our complaint we believe that the merits of the case will be decided in our favor. And we feel that the findings of the Commission in Division I were erroneously made based upon a mis-application of law; the setting of double standards, and, interesting enough, nowhere in the arguments this morning have you heard anyone make reference to the various serious constitutional questions which we have gone over in our complaint. So this is not a question of asking this Court to compare its expertise to the alleged expertise of the Division I under questionable circumstances. It is the asking of this Court to give us the opportunity to show where the Commission committed error in the evaluation of that testimony and also invaded the constitutional rights of these various plaintiffs in

making its decision. Now, we have heard from several of the interveners counsel that this manner was thoroughly considered by the Commission and the time table has been given; I think that is significant for two reasons; first of all, I think we must realize that the fair consideration that allegedly was given may have been given by Division I, but after pointing out to the Commission the allegations which we have made in our complaint, this voluminous record the voluminous report, all of those briefs were summarily denied within a matter of twelve days after their last submission. That is not thorough consideration. Now, they talk about the institution of this which they propose Your Honor, I have had the pleasure with working with everyone of the counsel for these interveners in many different cases and they are intelligent men and able motor-carrier lawyers, and they know as do their clients that there is nothing final until the certificate of that Commission has been issued and the fact that they may have made studies and they may have gone out and taken options is one of the best reasons why I think this Court ought to grant the Temporary Restraining Order. They in fact are arguing to you - "look what we have already

done, therefore, don't grant that Temporary Restraining Order," but if you don't grant it today and we hear it on the final merits of the case at some time later then they are going to come back and say "Look at all the things that we have done and what you will destroy - If you reverse the decision of the Commission"; in other words they are trying now to argue certain merits of this case that has no place in the Temporary Restraining Order hearing and it should not be considered by this Court. Through my newly acquired friendship this morning I have certain quotations from me and then arguments made by the 41 shippers, and he tells us that these shippers are having to do such and such. They have had to do such and such for seven years; there is no urgency about permitting these people to start an operation that could be reversed. I would point out to the Court in response to certain arguments that have been made along the four basic criteria that were enumerated by Mr. Johnson on behalf of the Commission I would call the Court's attention to G. B. Searing vs. United States, District Court Case from Eastern Tennessee, 1969, and that Court says, "This Court believes that the more proper rule is that it is

not necessary to justify the issuance of a Temporary Restraining Order, that the plaintiff's right to a final decision after a trial be absolutely certain and wholly without doubt. That if the balance of hardship tips decidedly towards the plaintiff it is ordinarily sufficient that the plaintiff has raised questions going to the merits which are so serious, substantial, difficult and doubtful as to make them fair ground for litigation and thus ask for a more deliberate investigation;" and the Court in that same Case took judicial notice that a carrier serving a particular market is apt to undergo a more rigorous hardship if confronted with a new competition than our carriers which are granted new authority in the same market. Now, we are talking about irreparable damage; the argument has been made - "look at these giant motor carriers," and I refer to this area, if the Court please, where do these carriers recover their loss of revenue in the damages that they sustain during the time when this action is pending if they are allowed to institute the proceedings and then this Court should make the determination that the Commission was wrong.

We submit to the Court that the irreparable damage argument is valid. The diversion, by the very words of these representatives would take it away from the plaintiffs and other carriers and as a result would be injurious not only to the carriers and to the public but not preserve the status quo in furthance of the National Transportation policy. Mr. Phineas Stevens would like to address the Court.

THE COURT: All right, Mr. Stevens.

BY MR. STEVENS:

May it please the Court I represented before the Commission certain of the plaintiffs in this proceeding, Gordon Transport, Camel 66, Red Lines, Transfer & Storage, and several others.

And I would like to submit to Your Honor that if the argument of the distinguished counsel for the intervening defendants is correct that in effect it will mean that our Statutes for review are completely ineffective, that there would be no purpose in such statutes. If the Court must assume that the Commission in all instances made no error of law why provide for a review. If the Court cannot preserve the status quo so as to give a Three Judge Court an opportunity to review the Commission findings without being confronted with

a situation that has changed since the Commission made its decision that would put the Court in a position where they in effect would be taking money away from the defendants, it would be closing down the terminals, it would be letting off employees, that is the position with deference, Your Honor, that the defendants would have you by denying this temporary Restraining Order place the Three Judge Court in when we come back, as Mr. Smith says, they want to come back with the situation where the Three Judge Court would be compelled to close terminals, close down service and all in order to find that the Commission did make errors of law as we contend. We ask only that the status quo be preserved in order that the Three Judge Court can make these determinations. Mr. Cross on behalf of Johnson pointed out that all the plaintiffs do not oppose all of the three applicants that were successful. That is, of course, correct. But I do not see that it really makes any significant difference because at least some of the plaintiffs oppose all of the defendants; for example Gordon Transport that I represent opposes all of them. He states that all will not suffer or do not claim that they will suffer irreparable

damage by the grant, for example, of the Johnson Application. It is true, but I think that if only one could be found by this Court that it would suffer irreparable damage that is sufficient; the fact that others may or may not is with difference in materials. We have for example an affidavit by Gordon Transport opposing all of the applications that it would result in irreparable damage. That irreparable damage, Your Honor, is not simply the loss of revenue and a loss of profit that might go to its stock holders. As described in the affidavit filed on behalf of Gordon it would result in a chaotic situation, a disruption of traffic patterns that would distort the existing operations to such an extent that chaos would result. Everyone in this proceeding has recognized from the beginning that the grant of these applications would result in massive re-alignments of traffic. The defendants have established that in their affidavits; that is rather a fantastic figure that Johnson has come in with and its projections that within six months time almost a million dollars would be diverted from existing carriers and transferred to Johnson. Now, we say only that such massive disruptions should not be permitted to

take effect until the Court has an opportunity to determine whether that is in effect justified. The Johnson affidavit is carefully drafted where it does not state that this diversion would come from these particular plaintiffs. Well, whether it does or does not we submit is not really material here. If so I cite then the Red Ball affidavit. It says percisely that they are now interlined with traffic plaintiffs and if they are permitted to engage in single line instead of joint line operations they will stop interlining their traffic with these plaintiffs and start handling it all themselves. Now, I would like to mention one factor here that I think must be emphasized, Your Honor. As Mr. Smith says this is not simply a battle of major motor carriers; there are many motor carriers involved, many large but some small. First, I will talk about the big ones because that is what the defendants would have us consider. They point to the fact that Gordon Transport is a healthy carrier; it is a healthy carrier, it is a large carrier; but I would like to point out that the examiners made certain findings of fact; these findings of fact were not challenged and they are the only findings that the Division adopted.

Adopted them verbatim because they were not challenged; those findings of fact as to this large carrier include the findings that the majority of all of its traffic would be subject to diversion. Now, it is true that it is large but that makes the disruption even more significant. What will happen to the public served by Gordon if over 50% of the traffic that it is now transporting throughout multiple states is subject to diversion? The results are real frightening - - will it be just specific terminals? The examiners found the applicants did not challenge - - the Division found that as to certain terminals, such as Birmingham, 98% of its' traffic would be subject to diversion. Should this Court permit a terminal to be subject to 98% of diversion simply because it is a large carrier. I submit that the fact that it is a large carrier makes it more important that Birmingham have the service of that large carrier. That is a finding in the Division reports. Also in the Division report as to this large carrier the Division stated specifically diversion of their freight to other carriers - -

THE COURT: What case?

MR. STEVENS: I am reading from page 768 of the Division Report. The findings are fact as to the plaintiff Gordon Transport. Diversion of their freight to other carriers would seriously effect Gordon ability to render adequate and satisfactory service. And will result in increasing its' operation of 50 miles between certain of its' terminals. In 1966 Gordon operated empty vehicles a total of over a million miles much of this between points involved in these applications. Now, that is a fact, the Division finds it as a - - -

THE COURT: I did not find that here. Now, where were you reading from?

MR. STEVENS: 768 of the Division Report. It is in Appendix G; Your findings of fact relative to the protesting Carriers.

THE COURT: Here it is. I have it.

MR. STEVENS CONTINUES:

I read the last two sentences of the findings relating to Gordon right up here in that particular finding. Now, another important thing that I want to emphasize, Your Honor, is this; no one is contending that these grants will supply service to any community that is now without service; or stated in another way that the granting of this

Temporary Restraining Order will deprive any community of service; the issue is simply "will that be provided in two line service or one line service," is mainly what the issue is. But that is not the only issue. We have heard arguments that the public interest must be preserved and is dominant. We of course agree that it is the public interest that is controlling but I cite you to another finding that appears on page 777 of the Report; as to the plaintiff, Campbell 66 Express. Now, there they also found that Campbell would be subject to massive diversions of traffic. Now, what would this massive diversions do to this carrier The Division found as a matter of fact that diversion of freight from its' terminal points will result in a deterioration of service at many of the smaller points served by Campbell, particularly in Mississippi which are not proposed to be served directly by these applicants. In other words the Division has found on page 777 that if these applications are granted there will be a deterioration of service to points they do not propose to serve. Now, it is true that when they got over into the body of their report they forgot about this finding, they gave no effect to this finding, they did not

discuss this finding but that is simply one of the errors of law that we will cite to the Court when we get to an argument on the merits. I cited here merely to show that this is not a one way street, that more service means better service or enhances the public interest. The Division itself has recognized that this diversion as to small points they do not propose to serve will result in a deterioration of service . The examiners found that the grant of any of these applications in its' overall aspect would result in a deterioration rather than improvement of service; so it is not just clear that grants of authority equals improved service. That is one of the issues of course, and we say that when the Division found that as a fact then did not give effect to it it was an error of law. But as to other - - - we have talked about the large carriers, now what about these small carriers. Mr. Bishop argues that these matters have been repeatedly argued and rejected by the Commission. Now, that is correct. They have been repeatedly argued by the Commission but we say that one of the errors is that they made no findings on this in their Report, they gave no consideration to it and it was an error of law

because they did not do so. For example, Red Line Transfer & Storage of Pine Bluff; what did the examiners find as to Red Line? They found that the grant of one of these applications would put them out of business. Now, the Division ignored that. We argued it, yes, but they did not deal with that finding at all. And they have cited that these large carriers operating with big profit margins, good operating revenues but they don't say anything about Red Line whose profit margin is paper thin or non-existent, an operating ratio of 99. and a fraction. It has no margin to withstand additional competition and that is shown in this. In those instances we submit only that the Court should not enter an Order which will resolve in all of these changes so that when the Three Judges Court sits on it the Court cannot properly review this as the Commissioner reviewed it but is going to have an entirely different case to look at. Now, they rely upon a Division, I mean a District Judge's refusal in Texas to not issue a Temporary Restraining Order in the Frozen Food case. We are not submitting to Your Honor that the issuance of a Temporary Restraining Order is something we are entitled to as a matter of right. Obviously we

recognize that we bear the burden of showing to Your Honor that we will incur irreparable damage. We submit that we have. In that case the District Judge said simply that the plaintiff had failed to establish that, that they show simply they are going to lose some revenue which he did not think constituted in that case irreparable damage. Our affidavits go much beyond that. We show many changes other than simple diversion of revenue. The pleadings in this case even show some of the applicants used the phrase that if other applicants are granted that it will strike a lethel blow or death blow to their operations; and that is much stronger, we submit as a factual matter than what was before the District Court in the Frozen Food case. Now, we submit Your Honor, that where the plaintiffs in this case will suffer as they have shown this massive disruption, where the defendants have shown only that they have made plans, they have acted on this, we say that the balance there should be to leave matters as they stand. Of course these defendants have bought equipment; they buy equipment every year, they have to buy equipment every year. But I say this, with that, Your Honor, if they bought equipment and made investments on the

basis of this order that they should not be heard to say that that should tie the hands of this Court. There has not been a single 24 hour period that has existed in which they have been in possession of a certificate that will justify that. Or an order authorizing the issuance of a certificate. When this case was filed in this Court the matter was still pending before the Commission on petitions which could have resulted in a review of the entire proceedings. As soon as the petitions for reconsideration were overruled as Mr. Smith has pointed out, instead of just letting them be in the dark as to whether a suit would be filed or not, we promptly notified the Commission that a suit would be filed and we sent them a copy of the letter and so then the Commission promptly came back and gave us this period of October 6 to file ourcase and request a temporary Restraining Order. We filed before that dead line. So theyhave known all of this, and I submit, Your Honor, that they should not now be heard in this Court that the Court should not preserve the status quo because they have gone out and acted on the reliance of the Commission, Thank you, Sir.

THE COURT: Anyone else want to be heard? Personally I think the case has been pretty well covered. And about all I can say to you is that I have not had, as I have told you, have not read all the affidavits and I have not read all the briefs but I do not have anything else to do but to do this for the next two or three days and I believe you will be justified in expecting some action out of the Court pretty soon. I am going to first dispose of the question of The Intervention of the Shippers, which I hope to be able to do tomorrow and I don't know whether I will get My Order to you on the Motion for Temporary Re-straining Order tomorrow or whether it will be Monday or Tuesday but I will get it to you just as soon as I can. I think the Court ought to give some consideration to the various contentions made and I don't think that our Honor has been able to do it, maybe there are lots of Judges that might and all that but they can do things I cannot even get in sight of but I never did like for a Judge just to arbitrarily when I was practicing law rule against me and act as though I did not know anything at all and probably I didn't but I think a Judge ought to give some consideration to these problems and that is what I

am going to try to do. I feel like another two or three days in view of the time that has lapsed will not be too detrimental to any of you men or to any of your clients; I think you will all pretty well survive in some way or other. Maybe I don't know how you will do it.but that is your problem, but at least I am not going to add to your burdens any more than I have to. Now, here is one thing I would like for you men to talk about; regardless of what the Court might do about the Temporary Restraining Order we have got to dispose of this case; Judge McHaffy is a member of the Court of Appeals of this Circuit and Judge Williams, in fact this is his court room, I don't have a court room, I just borrow this one occasionally; we have got to figure out a way as soon as we can to try this and I have not talked to the other Judges; but I have given some thought to the matter and it would seem to me with all the voluminous records that is in existance we might consider all of that as being in evidence in this case for the use or su portions of it as may desire and then this is a case that will have to be decided, that is, briefs will have to be submitted and studied by the Court and then oral argument will be illuminating to the

Court. Of all the cases that I have come in contact with I think oral argument is imperative in this case following the filing of briefs; I just don't see how the Court could proceed in any systematic way, any other way. I would like for you to give some consideration in your own discussions about the filing or the submission - - service and submission of briefs in sequence; I wish you would give some thought to that and advise me of any conclusions reached; if you can make that conclusion yourself it will just save us making it because the Court is going to make it if you men don't. Make it and you know more about your own work now. The only thing I am going to say I just don't want anybody dragging their feet another six or seven years - - I want to get rid of this thing one way or the other but we would prefer very much for you to work out your own schedule; then I can probably assure you we the Court will act from this and expedite it and there will be no dragging of the feet by the Court. I know that both of my associates are not inclined to do that. And I think, I stay confused enough, confused enough and if I can keep business moving it relieves my mind of some problems that maybe I did not understand.

I don't like to allow too much to accumulate at one time, so if that is about all we can do Court will be in recess, but let me ask you this question, have any of you thought about the problem that I mentioned about your briefs. Have you had any discussions that might lead to some agreement to proceed on?

MR. CROSS: I have discussed it with counsel for the Interstate Commerce Commission who is not present here today but he will have to write the brief for the Commission on the merits or arguments in support of authority. He told me last night that if the opportunity arose today as it has now, to tell the Commission, the Commission wants 60 days in which to prepare its' brief. Now, under that type of scheduling and as is customary in these Three Judge Courts I would think that the plaintiffs would want to fix a date on which the plaintiffs file, 60 days thereafter the Interstate Commerce Commission and the intervening defendants would file; and perhaps 20 days thereafter the plaintiffs file a reply brief, then the Court would fix the day of argument. Now, I would like to explore, like to see the plaintiff move ahead with the filing of their brief as prompt as possible.

THE COURT: I would too.

MR. CROSS: I have not explored it with the plaintiffs.

THE COURT: I have not either; I was just suggesting that you might talk about that a little bit here today, discuss that matter and then advise me so that I can talk to the others and you will hear from me on both of these projects just as soon as I can. I want to express my appreciate to the courtesy of all of you and the thoroughness of your argument, they have been helpful. It has cleared up some things in my opinion. It will be very helpful to me and all I can tell you I will dispose of them as quickly as I can and the Court will be in recess.

MARSHAL: Court is now in recess.

CERTIFICATE

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the proceedings had in the above entitled and numbered cause at Fort Smith, Arkansas, on the 1st day of November, 1972; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said proceedings as shown by my notes.

Reporter

Dated this 15th day
of November, 1972.

APPENDIX E

Transcript of hearing before Three-Judge District Court on July 24, 1973.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

- x

ARKANSAS-BEST FREIGHT SYSTEM, INC. ET AL : :

VERUS : NO. FS-72-C-66

INTERSTATE COMMERCE COMMISSION : :

- x

BEFORE A THREE-JUDGE COURT

HONORABLE PAT MEHAFFY
Eighth Circuit Court of Appeals
HONORABLE JOHN E. MILLER
Senior District Judge
HONORABLE PAUL X WILLIAMS
District Judge

Fort Smith, Arkansas.
July 24, 1973.
9:30 o'clock, a.m.

APPEARANCES:

DON A. SMITH, ESQ.
ALLEN WOOTEN, ESQ.
Post office Box 43
Port Smith, Arkansas. 72901.
Representing Arkansas-Best Freight System, Inc.

DREW L. CARRAWAY, ESQ.
618 Perpetual Building
1111 E. Street, N.W.
Washington, D.C. 20004
Representing Mecury Motors

M. WARD BAILEY, ESQ.
2412 Continental Life Building
Fort Worth, Texas. 76102
Representing Braswell Motor Fgt.

FRANK W. TAYLOR, JR., ESQ.
WENTWORTH E. GRIFFIN, ESQ.
1221 Baltimore
Kansas City, Missouri. 64105
Representing Transcon, Time D.C.

PHINEAS STEVENS, ESQ.
Postoffice Box 22567
Jackson, Mississippi. 39205
Representing Campbell 66

SEYMOUR GLANZER, ESQ.
Interstate Commerce Commission
Washington, D.C. 20423
Representing the ICC and the Government

MAURICE F. BISHOP, ESQ.
601-609 Frank Nelson Building
Birmingham, Alabama. 35203
Representing Bowman

JERRY C. PRESTRIDGE, ESQ.
Clark, Thomas, Harris, Denius & Winter
Postoffice Box 1148
Austin, Texas. 78767
Representing RedBall

COURTS OULAHAM, ESQ.
839 17th Street, N.W.
Suite 400
Washington, D.C. 20006
Representing Lochway, et al

JAMES W. BLAIR, ESQ.
Crouch, Blair, Cypert & Waters
111 Holcomb Street
Springdale, Arkansas. 72764
Representing Shippers

DONALD E. CROSS, ESQ.
918 16th Street, N.W.
Washington, D.C. 20006
Representing Johnson Motor Lines

ROBERT JOHNSON, ESQ.
Ass't United States Attorney
Western District of Arkansas
Fort Smith, Arkansas. 72901.
Representing the Justice Department

ROBERT L. JONES, JR.
Jones, Gilbreath & Jones
Merchants National Bank Building
Fort Smith, Arkansas. 72901
Representing Shippers

C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing before Honorable Pat Mehaffy, United States Court of Appeals, Eighth Circuit; Honorable John E. Miller, United States Senior District Judge; and Honorable Paul X Williams, District Judge, at 9:30 o'clock, a.m., on July 24, 1973, at Fort Smith, Arkansas: that the Appearances as stated appeared representing their respective clients; that during said Hearing the following proceedings were had in connection therewith, towit:

(Reporter's Note:- Where it is shown that John H.D. Wigger, Jr., is addressing the Court it should be Seymour Glanzer, Esq., addressing the Court as Mr. Wigger was not present at said Hearing.)

P R O C E E D I N G S

9:30 a.m.

MARSHAL: Everyone will rise (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

JUDGE MEHAFFY: Gentlemen, without any further preliminaries I am sure each is well acquainted with this case, FS-72-C-65, than I am because for all I know the pleadings are still continuing to be filed. My individual notion about this case is subject, of course, I have jurisdiction to speak for the Court, is that the way the case has developed and is developing that certainly you are entitled to a Three Judge case, the status that this one is in. I am going to read the Motions, et cetera, before us today. You are entitled to a speedy trial. We are willing to give it to you, but we are not going to clutter up this thing, letting everybody, letting four or five different attorneys argue for the same clients or anything of that sort. And after getting this thing started I am going to ask you all to designate the one who will speak for your interest. The only thing that I know for sure that we are going to do is we are going to take all this business under

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9:30 a.m.

MARSHAL: Everyone will rise (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

JUDGE MEHAFFY: Gentlemen, without any further preliminaries I am sure each is well acquainted with this case, PS-72-C-65, than I am because for all I know the pleadings are still continuing to be filed. My individual notion about this case is subject, of course, I have jurisdiction to speak for the Court, is that the way the case has developed and is developing that certainly you are entitled to a Three Judge case, the status that this one is in. I am going to read the Motions, et cetera, before us today. You are entitled to a speedy trial. We are willing to give it to you, but we are not going to clutter up this thing, letting everybody, letting four or five different attorneys argue for the same clients or anything of that sort. And after getting this thing started I am going to ask you all to designate the one who will speak for your interest. The only thing that I know for sure that we are going to do is we are going to take all this business under

submission and each protect everybody's rights, as best we know how to do it; and for the big session a couple of weeks from now that I have heard so much about, that is supposed to be the final, in which I understand some fifteen lawyers are hoping to be here to argue it orally. I will tell you right now, there is no such thing is going to occur. We will give everybody a fair trial but we are not going to sit here two weeks from now and listen to every four or five different lawyers representing every interest in this thing keep us for several days and listen to oral arguments. As I say this is about my notion. I have a little bit of experience with what we call Commerce Laws, know a little bit about this and I want to say just a preliminary statement to tell you that I am going to read to you these things that are supposed to come up today and still are continuing to come up, and call on Judge Miller to express hisself and we have to kinda individually. I would hope that we would get together before the day is over and tell me some tentative conclusion and we may take this whole bag of worms under submission, but that remains to be seen. I assume that everybody wants a speedy trial because the pleadings continue

to be filed, but here they are that I have listed, the things that need our attention this morning. There is a Motion by Intervening Defendant, Johnson Motor Lines for a temporary restraining order to hear and determine plaintiffs' application for preliminary injunction; and to hear and examine Motion for Supplemental Complaint. Next, Redball Freight has filed as an Intervening Defendant a Motion almost identical to the Johnson Motor above. Following that the plaintiffs have filed a Motion to file Supplemental Complaints. No, that is a Motion to file something else here. The Supplemental Complaint asks that the certificate granted to Jones Truck Lines be temporarily and permanently enjoined. Then there is an Intervening Defendant, Johnson Motor Lines, has filed a Motion in opposition to the plaintiff's Motion to file a Supplemental Complaint. Their Motion states that Jones Truck Line, 28-U.S.C.A.-1398, did not establish to Arkansas Best and Mercury Motors in opposition to Jones application. Next, a group of shippers, has filed a Motion to intervene as defendants. They seem to appear collectively as Daisy Manufacturing Company. Daisy Manufacturing Company has filed an answer to the Supplemental Complaint.

The Daisy group has filed a Motion to drop all the plaintiffs except Jones as not real parties of interest. The Daisy Manufacturing Group has filed a Motion to dismiss under 28-U.S.C.-1398, alleging that no party is standing as the party of interest to bring any action against the ICC. The principal of business as in Arkansas. Now, with that statement, I am going to ask Judge Miller, who is more familiar with this than I am or could possibly be because of the recent filings, and I would only add to see if there is some way you gentlemen can't separate it in groups and one of you, if you have any argument, that one of you speak for a group and not have any fifteen arguments or lawyers more or less arguing the same thing. As I said, I am not going to, don't have the power to dominate this Court, I am speaking now as an individual but I have listed what I think are the primary or paramount things and hope you all can be reasonable about these things because I think and we will be reasonable and maybe we can get together; I would not want to say this before everybody but we will make an effort to dispose of this thing in an orderly manner and in such a fashion that will give every body fair treatment; and with that

statement I will ask Judge Miller to comment on his view of the matters that will be taken up.

JUDGE MILLER: I hope the Court, members of the Court can get together on our procedure but I think the one paramount question before this Court for determination today, the first question that should be considered is should the Motion filed, Supplemental Complaint, be granted. If that Motion is not granted then the subsidiary Motions, which are made a part of the response of Jones and certain other persons, would automatically pass out of the case and leaves only for consideration at this time the Motion of Johnson as well as the other two to dissolve a Temporary Restraining Order that was issued, I believe, September 7, 1972. That would come; then the next Motion, which would probably be a more or less a Subsidiary Motion would be the Motion for a temporary or a preliminary Injunction, but I don't see any way to approach this matter without first determining whether or not the Supplemental Complaint should be permitted to be filed. If that is filed then we open a pandora box or some other kind of a box that will be, will raise a great many questions and I am not adverse to answering any questions that arise in the course of a lawsuit

but I think that it is just as important to go about determination of litigation in an orderly fashion. Now, here is what we have got in this matter; this Motion for Supplemental Complaint was filed on June 29, 1973; the record before the Court shows on December 30, 1971, originally denied, the Commission originally denied the application of Jones along with the application of other plaintiffs and cerdited only the application of Bowman, Redball and Johnson. That was in December of '71. On September 1st, the Commission re-opened the application of Jones and on December 6th set aside a portion of its' Order of December 10th in which the applications of Redball, Bowman & Johnson were granted. Then also it entered its' Order on December 6th but on May 29, 1973, the Commission apparently upon its' own Motion did correct, entered a Corrective Order on correcting the Order of December 6th; then along came this Motion. As the matter then stood when this suit was filedyyou had three, we had the Order of Interstate Commerce Commission granting these three applications and denying all other applications; although there was apparently a dissent of one of the Commissioners at that time. Well, the matter

stood that way until the Commission set aside and granted the Jones application. That participated the filing of the Motion for supplemental, to file a Supplement Complaint. That Motion raises in my mind some very serious questions. They have been briefed. I don't know anything else that could be said that has not been said in the briefs of the parties; and any oral argument on that Motion would, I think, just be plain repetition; but I do not construe that to mean that if you have anything to say additionally to what has already been said in the matter, why don't feel any hesitanc; in expressing yourself; but that seems to me to be the only orderly fashion that we can approach this case. Then after assuming that the Motion for, to file a Supplemental Complaint is denied, as I said, then we have only two questions left in the case as I see it; one is whether or not TRO should be lifted and then if it is lifted then whether or not a Preliminary Injunction should be granted in accordance with the prayer of Johnson and the other two men; so, if the Motion is granted, then we have got to make some arrangements about how we will proceed then; whether or not we will hold up the granting of the two or hold up the

consideration of Red Ball and Bowman and then let Johnson Motor fight it out with Jones. Again all of this is in the briefs. I cannot imagine anybody more explicit than you gentlemen have been in the presentation of the issues and the thing that is bothering me about the whole - - about that first Motion is the delay and what will be accomplished and whether justice will be served by re-opening the case to that extent. Now, there is the proposition, I have my own ideas about it and I am sure Judge Mehaffy and Judge Williams have theirs, but that is what I would like to have argued first; and then let us determine whether to permit it to be filed, then if we determine that then we will have to go into some other questions; if we determine it is not then there is two questions left for decision today, and that is with reference to TRO and Preliminary Injunction request. I know what is back of the Preliminary Injunction, of course, subjecting to the Order that was written on the TRO, but that is all right; but I imagine this, if the Motion is overruled, the Motion to file Supplemental Complaint is overruled and those other two what I call Subsidiary Motions are disposed of, and I think people should be pretty cooperative in that respect,

been operating about eight or nine months under that or haven't been operating because of that TRO for eight months. Well, I don't know how long it will take us to decide the case on its' merits. If the Supplemental Complaint is out there, is out and neither do I know how long it will take us to work out a decision with the Supplemental Complaint in there and the things that addresses itself to me, to say the least, is whether or not this Court in exercise of a sound judicial discretion should under that Rule 15-B, whether or not we should grant it; that is what I would like to do Judge Mehaffy is to hear from them on that Motion first. Now, I know counsel, eminent counsel is here, I have had you before me before on a TRO; I have some little advantage, I would have more advantage if I had a more retentive memory than my associates have here because you gentlemen argued that pretty thoroughly on that TRO; if you overlooked anything I could not detect it when I started to write my opinion in trying to answer you gentlemen that was opposed to the granting of the TRO, but that is theway I think it ought to be done, Judge Mehaffy, is to take up this and with reference to duplication of arguments, the arguments

on the Motions to file a Supplemental Complaint, can't be too much under the Rule and under the decisions and certainly under the writers themselves, so as far as I am concerned that is what I would like to do; it is up to these gentlemen here but if I am going to conduct it that is the way I am going to cnnduct it but that is all I can say at this time. What do you all want to do?

JUDGE MEHAFFY: Do you have anything Judge Williams?

JUDGE WILLIAMS: I was hoping to hear from the applicants for the Motion, the Interstate Commerce Commission briefly respond to it, give us a chance to retire and talk about what they said.

JUDGE MILLER: That is what I had in mind, that is the only thing I was trying to caution them about was, well, I want them to say what they want to say.

JUDGE WILLIAMS: Can you agree which one will tell about the Motion by Red Ball or by Johnson and others rather than have five or six, someone to be the spokesman. Mr. Cross, they keep pointing to you.

MR. CROSS: I think I have been appointed, Your Honor.

JUDGE MILLER: You think you have been elected,

Mr. Cross?

MR. CROSS: Yes, sir.

JUDGE MILLER: Let's proceed then.

MR. CROSS: Let me see if I can put this in the proper context. I think the plaintiffs are moving to supplement the Complaint as the moving parties. It would seem appropriate to me that one of plaintiff's counsel make its' argument in support of their application to supplement the Complaint that the Interstate Commerce Commission will know who - - who no one here can represent to represent the public and let it be heard in response in that Jones, Your Honor, is the carrier or the shippers but the shippers be heard in opposition to the Motion, and then perhaps one of the three intervening defendants, Red Ball, Bowman and Johnson could then elect one of our members to argue on the Motion.

JUDGE MILLER: That would be very good.

MR. SMITH: I have no reluctance to go forward and I will make the presentation on behalf of the Movants, the plaintiffs.

JUDGE MILLER: I would be surprised if you did have any reluctance.

MR. GLANZER: May I be permitted to appear before the

Court in this case? Before we go any further I think it would be very helpful, especially since I was not here at the time of the argument, on the time of temporary Restraining Order, if the Court would please ask the plaintiff to identify which clients they represent in this proceeding and also if we possibly could find out which of the intervening defendants those plaintiffs appear against in the proceedings. I am afraid we just don't know, at least I do not know, and I am having a great deal of difficulty in following the course of this case at this time.

MR. SMITH: Your Honor, I may be able to clear up any confusion Mr. Glanzer has. My name is Don A. Smith of the firm of the Harper, Young & Smith, Fort Smith, Arkansas, and I appear on behalf of all plaintiffs in this action.

JUDGE MILLER: All right, you may proceed.

MR. SMITH: Yes, sir --

JUDGE MILLER: Are you going to confine your talk to the Motions?

MR. SMITH: Yes, sir. Your Honor, the plaintiffs have filed a Motion to supplement the Complaint which was earlier filed in this Court on October 4, 1972. We have submitted to the Court a memorandum

in support of our position to file a Supplemental Complaint that occurs to me, and I will be happy to respond on any arguments that the Court would like to hear me on that this issue boils down to two questions raised by the intervening defendants; One, does this Court have venue for the purpose of entertaining the Supplemental Complaint, and secondly, if allowed to be considered will the Supplemental Complaint create delay in the proceedings that were originally filed on October 4, 1972. I would like to first address myself to the question of venue; as a preliminary statement, I would call the Court's attention that the only defendant in this case, the United States Government and/or the Interstate Commerce Commission has not thusfar challenged the venue in this proceeding. We have only a letter dated July 13, 1973, to make reference to the Government's position, and in that letter signed by Mr. Fritz R. Conn, General Counsel, the Interstate Commerce Commission has made the statemen of course and exhibably related to the issue and whether such relief should be granted by the Three Judge Court is the question as to whether the scope of the litigation should be enlarged as prayed by the Supplemental Complaint, and hence appropriate

for determination by the Three Judge Court; that is the only objection, if you can call that by the Government, so the Government does not raise the question of venue. The question of venue has been raised by what we have referred to as the intervening defendants, Johnson Motor Lines, filed a Motion in opposition last Saturday, I believe it was; Red Ball has not filed anything and Bowman tendered to us.

JUDGE MILLER: Red Ball filed a Complaint, didn't they?

MR. SMITH: I am sorry, it has not been tendered to us if they have and Bowman only filed this morning but I think the significant thing for this Court - - -

JUDGE MILLER: The Red Ball is in it, go ahead.

MR. SMITH: The thing to consider is the fact that none of the parties have questioned venue in this proceeding at any time. All answers of the Government, Red Ball, Bowman, Lochway and Johnson, all admit the venue of this Court. In his opinion in 350-Fed. Sup., page 541, Judge Miller found that this Court has venue under Title 28, U.S.C.A., 1398. That is only these late filed responses that question venue. The plaintiff's response is this;

one, this Court has venue because it has always had venue. The Supplemental Complaint relates to the same occurrence event and proceedings that was the basis for the original action that was filed by Rule 15-D, that is, those matters that have occurred subsequent to the fact the filing of the Complaint that are raised by the Supplemental Complaint; so this Court had jurisdiction, it still has jurisdiction. Now, there have been remarks made in the brief that I think are worthy of consideration and we get rid of those immediately, Johsnon Motor Lines, and that brief is one I am more familiar with because we have had it since Sunday morning. It says that this Court does not have venue because there are no parties plaintiff that have a residence in the Fort Smith District. That is incorrect, Arkansas Best Freight System, INC. and Mercury Motor, both, not only have a residency here, their general offices are here in Fort Smith, Arkansas; they are both plaintiffs in this proceeding. Johnson attempts to carry this one step further, and they say, now, wait just a minute, you can't bring ABF and Mercury Motors in here because they did not protest the Jones application, which is subject of the Supplemental Complaint;

and they cite 28-U.S.C.-A, 1398. Well, I am not content to rely on their evaluations so I would like to read it to the Court; the basis, and this is jurisdiction and venue, is that, excuse me, except as otherwise provided by law any civil action to enforce, suspend, or set aside in whole or in part an Order of Interstate Commerce Commission shall be brought only in the Judicial District wherein is the residence or principal office of any of the parties bringing such action. This does not relate back to the ICC proceeding. It says parties in interest bringing such action and ABF and Mercury Motors brought the action. They were both parties to this proceeding before the Interstate Commerce Commission and if you don't believe me I ask you to refer to 114-MCC, page 770, and referring to Mercury Motors, where it says, "Protest, the Bowman application (also appears) as witness for Gordons in support of Gordon's protest of the Jones, Red Ball and Strickland application."

The decision is attached to the Supplemental Complaint we filed and I believe at page 589, of 117 MCC, you will find that Mercury Motors is listed as a party who testified in oppostion to the Jones application. So I think that the question of venue

is laid to rest, not only in theproceedings before the ICC but in the matter in which this case has been structured. Now, remember, the plaintiffs did not cause any delay, this case was decided in December, 1971, by the Interstate Commerce Commission; and it wrote this report (indicating pamphlet) and in that report it recommended that Red Ball, Bowman and Johnson be given certain authority. In that same report it said Jones should not get any authority. Later after Jones filed for a Petition for ReConsideration, which they are entitled to do, the Commission reconsidered and in December of 1972, it reopened that matter on the entire record and purported to give Jones a grant of authority. On May 29, 1973, the Administrative Order came from the ICC and these plaintiffs immediately prepared and filed their Supplemental-Complaint. We did not cause any delay, we filed it as soon as we could have; we could not have raised the Jones matter initially because it was not administratively findings. Now, one of the things that the defendant, and I am using the intervening defendants because the Interstate Commerce Commission has not said anything, one of the things that they have said and they have

emphasized is Jones is different from Red Ball and Bowman and Johnson so you don't need to bring Jones case into the Bowman, Johnson and Red Ball case. Now, that is what they say when they don't want us to file a Supplemental Complaint but when they want to impress this Court by talking about the magnitude of the proceedings they say "and 900 witnesses appeared, part of those witnesses Jones, part of Red Ball, part of them were Johnson," so they want to take the good out of that and they want to leave the bad and say "you consider the bad for the purposes of this Motion." Mr. Riddle, somewhere in this building, has four cartons of materials that constitute the records of this proceedings; and that record is involving all four of these people. It is entertwined. Jones, though they are not a party here, was quoted by the Interstate Commerce Commission at page 589 of the decision in 117-MCC, Jones would not be materially - - would not materially effect these operations and that the grants to Red Ball ,Bowman and Johnson without a grant to Jones, quoting from Jones, "Strikes a death blow to the one of the oldest carriers in the Midwest Central South"; and they come in this Court and tell you they are not

involved and they beg the Interstate Commerce Commission "give us a grant of authority because you have done it to these other three and we've got to be involved"; and now they want to impress on this Court that Jones is out there in the pasture some place out there and is not involved. Now, the question of delay. When we submitted our request to file the Supplemental Complaint we were candid with the Court; we invited the Court to refer to Rule 20-B and Rule 42-a, which gives this Court the right, the power, the descretion and the authority to either hold these matters together or to separate them. We told the Court and we wrote a letter, a carbon copy to the Court and a copy to every one of these defendants, and we said "Your Honor, we are ready to proceed on that Complaint that was filed on October 4; we have submitted all of our briefs as late as July 16, 1973, and we are ready to proceed, just give us a date," and the Court suggested the date of August 13. We are not trying to delay the proceedings, we don't want to delay the proceedings. The Interstate Commerce Commission action in the handling of the Jones case necessitated our filing of the Supplemental Complaint. Now, there have been suggestions and

arguments that "well, - - you could file it some place else". That is right, ABF can't file it any place else and Mercury Motors can't file it any place else; but Campbell, Transcon, Time D.C. and Gordon could all file it some place else. Now, what we - what are we going to do when we file it? We are going to tell that Court [illegible] in Fort Smith, Arkansas, we have got a suit that involves the same parties, involved the same proceedings, has the same record, and we have got jurisdiction down there because of ABF and Mercury Motors but we have decided to come up here or down there, as the case may be, and file this case in your Court"; and that Judge is going to say, "well, when can I get a copy of the record," and we are going to reply to him "just as soon as the Fort Smith Court gets through looking at it and it contains four cartons, they stored it in the basement. The same evidence that was considered by the Commission in 114 MCC was considered in 117 MCC, but you forget 114 MCC because we have got us a separate lawsuit up here". That is preposterous; that is not judicial economy. The same law and the same facts and basically the same arguments are involved and that is whether or not the Interstate Commerce Commission attempted to

grant these four carriers authority on the facts that were before them; whether or not they denied these plaintiffs due process and all of thosematters which we have already briefed; and we are coming to you today and we say we think we are right, we think that the law supports our position to file the Supplemental Complaint. And as I said before I will be glad to answer any other arguments which the Court has that I have not considered in this presentation. I would like to say one other thing; if we reach the point of the filing of the Supplemental Complaint I am prepared today to present to the Court the affidavits in support of the granting of the Temporary Order, Restraining Order against the Commission and in those affidavits you will find affidavits from Arkansas Best Freight System and from Mercury Motors, two of the original plaintiffs in this case, the two plaintiffs upon which venue was originally based, and I will answer your questions.

JUDGE MEHAFFY: I have a question. I noticed in all that list of Intervenows and what not, never mentions Mercury Motors; is Mercury Motors still based here and still in the same posture as far as venue is concerned?

MR. SMITH: No, Your Honor, as a matter of fact, in this proceeding today we have two affidavits signed by Mr. Montague Williams, who is the Officer of Mercury Motors; we will present those affidavits at the appropriate time. Certainly you can look out the window and you can see their trucks operating every day.

JUDGE MEHAFFY: Your argument is it alone operating here can get venue?

MR. SMITH: Yes, sir, but as to the facts Arkansas Best is here and that gives the Court venue.

JUDGE MEHAFFY: That clears that up.

JUDGE WILLIAMS: May I ask a question; Mr. Smith, wouldn't you be in a better position to argue your position that the action of the ICC was capricious by showing that the ICC voluntarily modified its' Order by asking us to permit you to file additional and supplemental pleadings; why should we let you; we are presented with the question of whether or not the ICC or their Order is capricious; here they have voluntarily set aside the Order in some particulars, why do you want to enlarge the pleadings? Looks to me like it would be to your advantage to say their own actions show that they considered themselves arbitrary and capricious?

MR. SMITH: I think your argument is well taken except we are not in a position to argue the capriciousness of those orders until we can get them before the Court and the only way we can get them before the Court, since they were introduced in the same proceedings, is to file a Supplemental Complaint and attach them as we have done. We are not, we don't reach the point in our Motions to file Supplemental Complaint of arguing the merits of that decision; we want to do that to show the inconsistency and the overall transaction involving these four intervening defendants and the other applicants that were involved in that proceedings.

JUDGE WILLIAMS: Thank you.

MR. SMITH: Thank you.

JUDGE MILLER: Mr. Glanzer, did you file a document this morning?

MR. GLANZER: No, I did not, Your Honor; I prepared one but I would prefer not to file it because it is incomplete.

JUDGE MILLER: I thought you had filed it. That is what I had thought I had lost.

MR. GLANZER: No, Your Honor.

JUDGE MILLER: I was scratching through these papers for it; all right, go right ahead.

MR. GLANZER: Your Honor, Your Honors, I think we that we should do a little reviewing here; I know Judge Miller is familiar with the facts and background of this case but as Your Honor Judge Mehaffy said earlier, you had not had the opportunity to familiarize himself with this record. I think we should go back a bit and start in the year 1904 when an application was filed by a Carrier named Roadway, which is here in this Court as the plaintiff. That application sought to open up a traffic between the Southeast and the Southwest, the Southwestern States of the United States, and that triggered a whole series of about 19 or 20 applications filed by many carriers who had headquarters and operations either in the southeast or southwest seeking to bridge that gap. The Commission was confronted with a very difficult choice, whether to let each of those applications proceed separately or whether to consolidate the applications for a hearing on a single lectern though maintaining the separate integrity of each of those applications and as individual cases. A prehearing conference was held and as a result of the prehearing conference ten of those applications were selected for consolidation. That case took an awfully long time to try and to be

decided before the Commission.

JUDGE MILLER: May I ask a question, please?

MR. GLANZER: Yes, sir.

JUDGE MILLER: At that conference when you reduced that number from the 19 or 20 to 10, what happened to those others you did not include in the lawsuit?

MR. GLANZER: I can give a partial answer to the best of my recollection; some of those proceeded independently. Among those applications are some of the plaintiffs in this courtroom; several of those applications were granted long ago; several may have been denied; others may have not prosecuted those applications. I believe Mr. Cross may have a record of each of those applications here in this court room and he may be better prepared to reply than I. And they may be in his brief.

JUDGE MILLER: I think it is in the brief but the question just occurred to me.

MR. GLANZER: May I proceed, Your Honor?

JUDGE MILLER: Yes.

MR. GLANZER: Well, as the Commission says in its' report in the case which came to be known before the Commission as the Herron case because in the reports of the Commission it was the lead application. The Commission said, after this hearing was

over and after the examiners report came in and examined the petition - - - I am sorry exceptions were filed to these reports, many briefs were filed and the matter came before the Commission and the Commission in its' report in the Herron case said, "this has been by far the most extensive Motor Carrier proceeding ever before the Commission," and it was. There are over 23,000 pages of transcript of testimony. There are nearly 2000 lengthy exhibits in the case; and the pleadings filed by the various parties, the ten applicants plus the sixty-six protestants, some of whom it so happened were also applicants protesting some of the other applicants in the case. Your Honor, I don't think it is any exaggeration to say that the pleadings alone would stretch from just about one end of the Clerk's quarters over here to the end of this table (indicating); I know Judge Miller has had an opportunity to see some of these things; it is lengthy and required a lot of work on the part of the Commission to decide this case. There were delicate transportations issues involved and the Commission did finally decide this case, as Judge Miller has pointed out, in December of 1971 by a Three Member Division constituted by a Statute and that Three Member

Division decided that there should be a grant on a comparative basis to three of the applicants in the proceedings. One of the applicants, Roadway, fell by the wayside of its' own accord; it achieved what it wanted in another way. Another carrier chose not to file exceptions but was carried along in the case anyhow, however, its' applications was denied. That applicant is not here in this court room. That left eight of that eight. The Commission comparatively on the basis set forth in its' decision granted the application of Red Ball, Bowman and Johnson; however, under the Commissions practice that decision didn't become final until petitions for reconsideration filed by the parties could be decided. That petition or those petitions for reconsideration were not decided until the fall of 1972 by a Commission decision of December 1, 1972. It was then that the case became administratively final and ripe for judicial review or for the filing of the Complaint fudicial review before any Court in which any plaintiff, in which any party adversely affected by the result, resided or had a principal place of business. However, also in accordance with the Commissions practice, petitions for a finding of general transportation importance, something like

a petition, filed with an Appellate Court seekings - seeking a rehearing on back were filed. This did not affect the administrative finality of the case before the Commission. If denied --

JUDGE MILLER: I looked and looked and I could never find anything where any Court had ever commented on that kind of a Motion. I figured out what it was myself, that is to me. I may be wrong, that wanting them to proceed as a general transportation problem; that was because of the enormity of the whole proceeding, wasn't it, and so many people involved and so many systems being involved, is that the basis for that motion?

MR. GLANZER: I think that generally summarizes what the parties who filed that petition thought, yes, Your Honor.

JUDGE MILLER: That is what I thought; had that Motion been granted would that have affected the decision by the Commission?

MR. GLANZER: Had the Motion been granted, Your Honor, it would have been the same as I tried to analogize as if a Court of Appeals had said, "allright, instead of Three Judge Panel to decide the case we will now have, if it is a nine Judge Court of Appeals, Nine Judges will set.

JUDGE [illegible]: ...ould it have been submitted to the eleven Commissioners?

MR. [illegible]: It would have been submitted to -- if the Commission was fully constituted, to the eleven Commissioners.

JUDGE MILLER: If the Commission had its' full membership it would have been submitted to the full Commission rather than to a Division 1?

MR. GLANZER: Yes, Your Honor, but the Motion -- that is the Petition, as we call it, a Motion was of course under the Commission's rules submitted to all of the sitting members of the Commission for individual election and for individual vote as to whether or not to grant the Petition.

JUDGE MILLER: All right.

MR. GLANZER: And --

JUDGE MILLER: That explains it.

MR. GLANZER: I can understand why Your Honor did not figure it out I did not think it was enough of importance to refer to it in the brief, however, I think it should be very carefully mentioned that the majority of the Commission who voted on the case voted against granting the Petition for general transportation importance but I am ahead of myself now, Your Honor. I would like to go back.

JUDGE MILLER: I am sorry.

MR. GLANZER: The point that I do want to make before I go back is this, if this vote is not as one might imply for himself in reading the various pleadings and papers filed by the plaintiff in this case, the vote is not secret by Statute by Section 17 (3) of the Interstate Commerce Act, anyone seeking to learn the nature of a Commissioner's vote or any matter need only pick up the telephone and call the Secretary's Office at the Interstate Commerce Commission and say, "how did the Commission vote individually on my petition"? And they will be told by Statute.

JUDGE MILLER: I had no thought about that; the only thing I did try to find out what that meant but I can understand now --- those fellows just met and read the record and says, "Oh, well, let the Commission decide, let Division I decide it."

MR. GLANZER: As Your Honor knows I am sure Division I is statutorially empowered to decide these cases.

JUDGE MILLER: I understand that, allright.

MR. GLANZER: I come back to, just before the Petition for General Transportation importance, as Mr. Smith pointed out correctly, in the Commission's Order

nying the Petition for reconsideration in connection with the Red Ball, Johnson and Bowman applications. The Commission, however, did grant Jones Petition for reconsideration and reopened the Jones proceedings. Thereafter, the Petition for reconsideration was filed and immediately thereafter, before waiting for the result of that Petition to come down the plaintiffs instituted this Court action and refer to the filing of the Petition for general transportation importance in their Complaint. I am going to jump ahead for a moment and say that one of the things that plaintiffs say entitles them to a junior or to supplement their Complaint is the fact that they did not note in their Complaint that the Petition for general transportation importance was denied by the Commission. However, that information has been before this Court by virtue of the defendants answer to the Complaint so that we have heard that fact so that is not new to this Court, this Court has known this for many months. We go back; as Your Honor recalls the applications were made for a temporary restraining Order. I was not here but I read Your Honor's decision granting the Temporary Restraining Order.

Thereafter in December, thereafter the Commission decided Jones - - - Jones' petitioned for reconsideration and in a written opinion the Commissio granted the Jones application but whereas they granted the Red Ball, Johnson and Bowman applications on a comparative basis the Commission here very carefully distinguished and said "we are not granting this applica*ion of Jones on a comparative basis, we are granting it because we have not given authority to these others, this is something separate within this proceeding" and they made that point at page 594 of their decision, which appears at 117 MCC, beginning at 586. Now, they made that quite clear, this was not handled, although on the same record and on the same record in the same general consolidated proceeding, the basis for the grant was entirely different, although there was some overlapping of necessity in order to permit Jones to serve the points, the separate points that it was given the authority to serve.

JUDGE WILLIAMS: I don't want to break your chain of thought but didn't that constitute an amendment, the Order, while this case was pending?

MR. GLANZER: No, Your Honor, it did not; you see

that was not the final Order for Jones. The [illegible]. It is not an amendment of the Order which this Complaint attacks". The attempt of the Supplemental Complaint is to attack an entirely different Order in a different docket, because the Jones case got separated out at this point.

That is, well, yes, that is right, I understand. I wish you would call my attention, I read that about the reasons given by the Commission in granting the Jones application, I remember something about what you said there but my little mind just wont hold everything like it should, or like some of you gentlemen --

MR. GLANZER: If you wish, Your Honor --

JUDGE MILLER: Give me that page number?

MR. GLANZER: It was 117 MCC, beginning at 580, the case citation is 117 MCC, the page number, specifically is 594, however, there is a slight introduction on page 593, if Your Honor will permit me and if Your Honor will wish it I will read it to the Court.

JUDGE MILLER: I think it is an important point.

MR. GLANZER: All right, Your Honor, under the heading on page 593 of Discussions and Conclusions

in the Jones case;" the Commission said, "It was determined in the prior report, that is the report at 114 MCC giving the Commission's reasons for the grant that Johnson, Bowman and Red Ball, it was determined in the prior report as noted above that the record presents substantial evidence of a prevading public satisfaction with the available transportation services (largely joint line in nature) from, to and between the areas here under consideration as well as of a rapidly increasing demand and need therein for additional direct single line Motor Common Carrier Service. It was concluded that the volume of traffic shown to be moving would not sustain the added services and operations proposed by all eight applicants and the granting of the applications of all remaining applicants" could lead to unhealthy if not cut throat competition inimical to the public interest."

MR. GLANZLR CONTINULS:

The Commission went on and said, "These conclusions in our judgment have not been shown to be in error and are fully supported by the substantial evidence", but as Jones submits, while it was concluded that the supporting shippers had shown a need for service, the prior report fails to grant sufficient authority to assure that numerous shippers in Arkansas, Kansas, Missouri and Oklahoma and a number of shippers located elsewhere which have traffic moving from or to points in these states will be able to obtain the responsive single-line motor carrier service for which they have shown a need.

Neither the successful applicants inherit this, Red Ball, Johnson or Bowman nor the others, Herring and Strickland, would be able to serve a number of the supporting shippers located in the above described four-state area or a number of points therein from or to which traffic has been shown to be moving. Of the applicants, only Jones now holds the authority necessary to insure that the supporting shippers either located therein.

JUDGE MILLER: That's in these four states?

MR. GLANZLR: Yes, Your Honor, or having traffic

moving to or from this area will be able to obtain the required single-line service.

The only shortcomings in the prior report, therefore, are the failure to recognize this essential fact and to grant Jones authority to serve between points in the four-state area on the one hand, and the other, Atlanta and Birmingham.

There is another paragraph that deals with this, but I think that Your Honor will allow me to go down here and read this sentence towards the end of the paragraph saying, "For the most part the service authorized herein will not needlessly duplicate that authority already granted in Herring and we do not believe that this grant will result in a healthy competition amicable to the public interest. Additionally, safeguards will be taken as more fully described below in order to avoid granting more authority than the pertinent service according to shippers they show they require." They conditioned this grant to make sure that to the extent practical and possible that the Jones grant was not a comparative grant as were the previous grants which are the subject of the order which in turn is the subject of the initial complaint filed in this action.

JUDGE WILLIAMS: What is the date of that? Jones?

MR. GLANZER: This was decided on December 6, 1972, Your Honor, and in accordance with the Commission's practice, was served on December 18, 1972.

Now, as was the case in regard to the previous order involving the other three carriers' petitions for reconsideration of this grant or this report and order were filed and it was not until May 29 that the petitions for reconsideration were decided.

JUDGE MILLER: The real heart of this Jones application that really aroused these, Johnson and others, was the provision with reference to service between Atlanta and Birmingham and down in that particular area, wasn't it? In the last Jones order?

MR. GLANZER: The complaint of the plaintiffs in this case?

JUDGE MILLER: Yes.

MR. GLANZER: I honestly do not know, Your Honor. I don't know what the plaintiffs are complaining about in this case and this is why I asked the question at the outset which counsel represents which party in this proceeding and what are they complaining about individually in the grants, in

the various grants, in the various dockets issued by the Commission. I am completely at a loss at this moment.

JUDGE MILLER: It'd be a lifetime job trying to figure out what each one is complaining about when you take the whole record, but it seems to me like you take the one that serves the Atlantic Seaboard - that's Johnson, isn't it - It is vitally concerned with the effect of this order of Jones in favor of Jones opening up or changing some of the authority between those points from Atlanta to Birmingham or down in that area.

MR. GLANZER: No, sir, that is not so, Your Honor. I think perhaps Your Honor is referring to someone else. Johnson is an intervening defendant. Jones is not in the case at this point nor have they filed anything to get in the case. Johnson is not a plaintiff in any way.

JUDGE MILLER: No, he's not -- I was not inferring that, but I meant that was the objections.

MR. WIGGER: No, Johnson is not objecting to anything Jones has received. Johnson sits on this side of the table.

JUDGE MILLER: Who is except named plaintiffs?

MR. GLANZER: I don't know, and that's one of the things I want to come to here.

JUDGE MILLER: Go right ahead.

JUDGE MEHAFFY: Let's go 'way back then. Just how did the second order of the I.C.C. adversely affect anybody? Now, let me state it another way. When you go to the root of this matter in the original order, how far could Jones go in that direction?

MR. WIGGER: I think Jones will have to tell you himself, Your Honor. The reason for that, the reason for that is this is a terribly complex geographical situation. Jones -- But perhaps I can explain it this way. I think perhaps Judge Miller has given me an assist on this, something I have neglected to mention. I said in my brief there is a kind of breakdown in the ten applications that were filed with the Commission.

Roadway sought to go from a southeastern point straight south to Pensacola, Florida, across from Pensacola to New Orleans, then up to Baton Rouge. Now, Roadway was a special situation. They were the only ones here, as I recall, that had authority both in the southeast and the southwest at that time and this was kind of a little

fill-in. But afterwards we had a lot of southwestern carriers saying, "Hey, we have a real stake in traffic now between the southwest and the southeast". These two economically dependent areas are beginning to generate an awful lot of traffic and more motor carrier service is necessary to fill that need so a group of southwestern carriers filed applications and at the same time the southeastern carriers, not to be outdone, said, "Well, if the southwestern carriers want to come east, then we want to go west and we want to fill the gap for the needs of our customers." In addition also, of course, there was the other traffic that was coming in from the northeast to the southwest or the southeast and also from southwest through the southeast up into the northeast and the north.

Now, after the Commission decided on May 29 to deny the petitions for reconsideration and grant the Jones authority, that denial made the Jones case administratively filed and eligible for filing in the court.

There was a petition for general transportation importance filed by the people who sit here on my left and some others and the petition filed for general transportation importance

was denied by the Commission unanimously.

Well, I have come to the point where I said that the disappointed protestants in the Jones case could come to court to seek judicial review. However, who are the disappointed protestants in the Jones case. Well, we have to start with the, I think, Appendix Three to my brief in which I show or try to show the line-up of the plaintiffs versus the applicant in the proceedings before the Commission, and if the Court will look the Court will see that Arkansas Best Freight did not protest the Jones application. They had no interest in it. They can't be aggrieved now; if they say they are then they certainly have not exhausted their administrative remedies before the Commission.

Mercury Motors, Incorporated of Fort Smith, they were not a protestant to the Jones application.

Those are the only two plaintiffs which have a residence or principal place of business --

JUDGE MILLER: I don't want to be constantly interferring but the petition that Jones filed for reconsideration, did Jones undertake

to separate, reach in to this large case, reach in and take its application out of the Herring case that was covered earlier and re-install it as a separate docket?

MR. WIGGER: It was never other than a separate docket.

JUDGE MILLER: I know it was always a separate docket but -- that is true, but, in other words, he says, "Let's just separate this from this consolidation". Is that in effect what they said?

MR. WIGGER: I think what they said, according to what I just read to the Court, Jones felt that it was restricted by the comparative consideration of all the other applicants and wanted the Commission to decide its case on its own special facts and the Commission did, said that it did.

JUDGE MILLER: All right.

MR. WIGGER: I'm sorry.

JUDGE MILLER: That's all right. Go right ahead.

MR. WIGGER: We have heard from Mr. Smith that well, maybe Mercury Motors might stand in a different category if they came before the Commission as a witness in support of another protestant against the Jones application. That

is true, but I think the circumstances of that might be of interest to Your Honors and I think I should read all of this to the Court as it is very fascinating. This is most fascinating, Your Honor, in regard to Mercury Motors and its opposition to the Jones case. Now, I think it will show -- What I'm leading up to here is telling Your Honors that the Government and the Interstate Commerce Commission are not going to waive the venue and jurisdictional requirements of 28 U.S.C. 1398 insofar as the attack upon the Jones order is concerned.

I would like to read, Your Honors, with your permissions, from the direct examination at this point and also some of the cross examination of the witness who appeared for Mercury Motors at this proceeding, at page 20,28' of the transcript. Dennis Cormack was sworn, questioned by Mr. Stevens: "Give us your name and business address, please." Answer, "Dennis Carmack, Mercury Motors, Inc., 1022 South "Y" Street, Fort Smith, Arkansas." Question: "Mr. Carmack, have you prepared certain material for presentation in this proceeding?" Answer: "I have." Mr. Stevens interjecting at this point: "Before

proceeding, Mr. Examiner, I believe I am correct that this record does not at this point reflect an appearance on behalf of Mercury Motors, Inc. as a protestant and at this point I would like to enter an appearance on behalf of this company as a protestant in the Bowman case only. It is my understanding that timely protest was filed." Examiner Jessup: "Protest - timely protest was filed?" MR. STEVENS: "That was my understanding. I would like to ask the witness if he could supply the date of that protest." WITNESS: "I can. Mr. Bishop. Mr. Bishop represented Bowman before the Commission and also in this Courtroom." MR. BISHOP: "We meant no point that they did not." Examiner Jessup: "All right. The protest is limited to the Bowman application." MR. Stevens: "That is correct". And the witness -- I'm on 20,285 now -- "That is correct", and the witness is presented in support of his protest of the Bowman case.

I would like to have marked for identification a one-page statement setting forth certain information concerning Mercury Motors. Examiner Jessup: "Sixteen Hundred", and it was marked. There is some colloquy here and a question

and answer and then Mr. Stevens goes on. "Mr. Examiner, I have made an error that I would like to correct at this point. This witness is appearing solely as a protestant in the Bowman case but this witness is also offered in support of the protest of Gordon's Transport in other cases and I neglected to explain that. The cases that Gordon's offers the witness in will be the Jones, Ped Ball and Strickland." We now go to page 20,360, and Mr. Bishop has concluded his cross examination and Mr. Blair who represented Jones begins his cross examination, and he says, "Mr. Carmack, when did you prepare Exhibit 160??" "Approximately a week ago" was the answer, and the question: "And I take it at the time you prepared it that you had not decided to appear as a witness for Gordon's against the Jones application?" Answer: "That is correct. Question: "Or you would have put it in the statement?" Answer: "That is correct." Question: "Would you mind telling me when you decided to be a witness for Gordon's in support of Gordon's and their protest of the Jones application?" And the answer, "It was announced here at 9:30 this morning." Question: "And that is when you decided, is that correct?" Answer: "Yes, sir".

Question: "All right. NOw, what do you understand that you're helping Gordon's protest in regard to the Jones application?" Answer: "Sir --" Mr. Stevens: "I object. If he wants to state what he understands what the Jones application is, it's up to whether he's going to help us or hurt us". MR. BLAIR: "All right, Mr. Examiner. There have been statements distributed by Gordon's which presumably Gordon's is going to put in evidence which delineates their interest in regards to the Jones application because in spite of my objections we took the supporting witnesses before we got that statement in. I don't have it in the record but everybody has got it and it clearly delineates the Gordon's interest in the Jones application and it's not the entire Jones application, and the objection does not make sense" and the Examiner: "You may be a little too technical, Mr. Blair. We're going to overrule that objection and proceed, nevertheless."

And the question, by Mr. Blair: "Can you answer the question then? What do you understand that you are helping Gordon's in regards to the Jones application?" And the answer, "I don't know."

That is the extent throughout this proceeding how the interest of Mercury Motors, Your Honors. One of the reasons why I want to know who is representing who here is I would like to know who is representing Mercury Motors because they never filed, as near as I can find out, and I looked through every pleading in the Commission's docket. I do not find a single statement subsequent to this event of Mercury Motors' interest in this case. Their name does not appear in regard to any pleading that I can find out, and I don't know who' represents them at this point in time. I assume Mr. Stevens, but I'm not sure, because they never once dignified this proceeding by ever again appearing before this Commission in this long, complicated, voluminous case.

That is why the Government at this point must point out that there is no venue plaintiff in this action that was commenced last year who has any interest in the Jones grant.

JUDGE MILLER: Is that a convenient place for you to stop, where we could have a recess for a few moments?

MR. WIGGERS: Yes, sir. I'd like to go on to something separate at this time.

JUDGE MILLER: All right.

JUDGE MERAFFY: Court will stand in recess five minutes.

MARSHAL: Court will stand in recess for five minutes.

JUDGE MILLER: I'd like to have about ten.

MARSHAL: Court will stand in recess for ten minutes.

RECESS

11:15 a.m.

MARSHAL: Everyone will rise. Court resumes in session. You may be seated.

JUDGE MEHAFFY: You may proceed.

MR. WIGGERS: Your Honors, may I interrupt myself at this point and say I am about to go into something else, at least I would like to at this point. However, is there anything in what I have said so far that Your Honors have any concern or any additional questions that you might ask me at this time before going to the rest of it, the rest of the presentation?

JUDGE MILLER: As far as I'm concerned, I don't know how you could enlighten us any further on those questions, but that does not remove the confusion within my mind. You would perform a miracle if you did that.

JUDGE MEHAFFY: All I can say is, let's get along with this. We have others to hear from and pretty soon the day will be gone.

MR. WIGGERS: Your Honor, Judge Miller has indicated that this motion of plaintiffs is a matter committed to the discretion of this court, and addressing myself to that discretion I would like Your Honors to be aware of what the United

States Supreme Court said in 1948 - sorry, 1949, case of United States versus Interstate Commerce Commission, at 337 U.S. 426.

JUDGE MILLER: What's the name of the case?

MR. WIGGER: United States versus Interstate Commerce Commission.

JUDGE MILLER: All right.

MR. WIGGERS: At page 442 they refer to the Urgent Deficiencies Act which Your Honors know is the popular name of the Act which grants the right of judicial review in a statutory three-judge court of decisions of the Interstate Commerce Commission. And the Court emphasized at that time that the Urgent Deficiencies Act of 1913 abolished the Commerce Court and transferred its jurisdiction to District Courts composed of three judges. In considering this Act, Congress was urged to bear in mind the necessity for providing a forum that could expeditiously review Commission orders of widespread importance and they comment again later on that the Urgent Deficiencies Act envisaged and was designed to obtain an accelerated judicial review procedure.

I urge upon Your Honors that if the motion to supplement the complaint is granted it

means that the order under attack since last fall in which a temporary restraining order was issued staying the operation of the Commission's order granting authority to three carriers to serve the public will be delayed still further because this action against Jones cannot possibly become ripe for judicial review and disposition for another five months at least because it will require that much time for the briefing just as it required almost eight months for the briefing of the case that is already before the Court that is ripe for argument and disposition because all the briefs are in, as Judge Miller said, I don't know what else can be said about the Commission's order granting the authority to Red Ball, Johnson and Bowman by the parties in this case.

We feel that if the motion is granted there will be prejudicial delay in the determination by this court of the order granting authority to Red Ball, Johnson and Bowman.

JUDGE MILLER: I'd like to ask a question right there. I am fairly familiar with what you're talking about, the delay and so forth and so on. Now, Jones is not at this time before this court. I mean, the order that has brought

necessitated the filing or the ultimate filing of the supplemental complaint. Now, suppose we overrule the the motion and refuse to let them file a supplemental complaint. We go ahead. Then what would be before us would be whether the validity of the three orders of Johnson, Red Ball and Bowman -- that's right, isn't it?

MR. WIGGERS: (Shakes head in affirmative).

JUDGE MILLER: Now, we act on those. Now, where does that leave these people that are protesting the Jones part of it?

It may be -- Well, I don't know.

MR. WIGGERS: It does not leave them without remedy in the court, Your Honor. They have every right under the statute that they had before. Those who are parties interested in the event have a forum to air their grievance under the statute.

JUDGE MILLER: The only thing, until the suit was instituted by those people and the court had an opportunity to consider whether or not to suspend the operation of the Jones order, he could go -- he could go right into business, couldn't he?

MR. WIGGERS: Yes, Your Honor, if the stay of the

type that was issued by Your Honor against the initial order in this case which prevented the operation of the Order only, that is, prevented the parties from conducting operations under the grant.

JUDGE MILLER: The three.

MR. WIGGERS: The three.

JUDGE MILLER: Jones would have no restraint until some other proceeding was instituted.

MR. WIGGERS: Yes, and Your Honor, as Judge Findley has said, I am sure that one of the plaintiffs or one of the parties who is aggrieved will win the race to some forum and they will be able to bring their action, present their complaint for the grievance to a United States District Judge who will be able to act in the premises, and you know, Your Honor, that is exactly what some of the plaintiffs in this courtroom said before the Commission when they filed their petitions for reconsideration of the Jones grant.

For example, as the Commission's order of May 29.

JUDGE MILLER: Who was it filed the motion for reconsideration of the order, entering the order in favor of Jones?

MR. WIGGERS: All right, Your Honor. The order shows the following. It was a joint petition of Mercury Freight Lines, Inc. and East Texas Motor Freight Lines. They filed theirs on January 17, 1973, for reconsideration. There was a joint petition filed by Transcon Lines and Time D-C on January 17, '73, for reconsideration. There was a joint petition of Roadway Express, Inc. and Roadway Express, Inc. of Mississippi filed January 17 for reconsideration.

Now, the petition, the joint petition of Campbell 66 Express, Inc., Gordon's Transports, Inc. and Red Lion Transfer and Storage Company, Inc. filed January 19, 1973, for reconsideration embraced a request that the Commission hold this proceeding, meaning the Jones proceeding, in abeyance until this court decided the case against the three carriers, Red Ball, Johnson and Bowman. They were able to separate it in their minds then, but now --

JUDGE MILLER: I did not see those petitions. I guess, of course, it's in the record, the whole record. I kinda shied away from that whole record. I can't lift those heavy objects any more. That bothered me a little bit.

JUDGE WILLIAMS: Let me ask a question. Do you care

to comment jurisdictionally what status the Jones petition is in when it was granted by the Interstate Commerce Commission in December of '72, three months after this court entered a temporary injunction presumably to have everything in status quo?

MR. WIGGERS: Yes, Your Honor. I can see Your Honor may believe that Judge Miller stayed the Commission's action with regard to Jones. I did not read the temporary restraining order to indicate that.

JUDGE WILLIAMS: Does it place this court in the attitude of trying to review a constantly changing order that if the Commission keeps making amendments and changes and one thing and another, does it put it in the attitude of trying to review an order which is not stable and that the Interstate Commerce Commission can change if itwants to?

MR. WIGGERS: I don't know if I completely understand your question. It is correct to say that the Interstate Commerce Commission's orders until final and in this case final would be the issuance of the certificate filed with the Commission for proper cause to take back an Order. I do not think that is reall what is involved here.

JUDGE WILLIAMS: We're talking about two different things. We recognize that this is a field in which the Interstate Commerce Commission has the expertise and the exclusive right. We only review within the limits, but when we are trying to review it, are we placed in the position that the Interstate Commerce Commission can change it, modify it, while we're trying to review it?

MR. WIGGERS: I don't think so, Your Honor. As I understand Judge Miller's order --

JUDGE WILLIAMS: Isn't that what has occurred in this case?

MR. WIGGERS: No, sir, I don't think so, Your Honor. I think Judge Miller's order as I recall it and I don't have a copy in front of me, did not go to Jones at all, did not go to the Commission's reconsideration nor was he requested to issue a T.R.O. in regard to the Jones aspect of the case.

I think all parties at that time considered Jones to be a separate proceeding and it was not made the subject of the application for a T.R.O. The Commission was not instructed by Judge Miller not to proceed to review the Jones

case. There is just no restraint upon the Commission from carrying out its statutory duty to review an application filed by -- filed by the applicant Jones. I am indebted to counsel here who has given me a copy of the decision of Judge Miller on the temporary restraining order in which it appears at the end the following language. "Therefore -- and this is 350 F.Supp. 547 - I'm sorry, 350 F. Supp. at page 547, "Therefore, an order is being entered today restraining the I.C.C. from implementing any orders herein complained of", and the order that was complained of was the granting of authority and not the granting of reconsideration to Jones.

JUDGE WILLIAMS: I was not carrying a brief for either side, just wanted comments on it.

MR. WIGGERS: We view any further delay in the decision on the original complaint attacking a single order of the Commission granting the authority of Red Ball, Johnson and Bowman to be prejudicial to the public interest. We think that that should be decided and should not be held in abeyance, particularly because there is this eight month old temporary restraining order which should, since the briefs have been before

the Court, it is in a proper posture for final action by this Court. We think that should be handled at this stage and that the Court should not encumber this case with an entirely separate order of the Interstate Commerce Commission.

I am not going to here try to characterize the action of the plaintiffs in seeking a supplemental complaint in this proceeding.

JUDGE MILLER: Do you have a copy of those motions that you read there, motions for reconsideration filed by those people that you read a while ago?

MR. WIGGERS: No, Your Honor, although I have with me -- All that I have -- Well, of course, it's in the record downstairs.

JUDGE MILLER: I know it's in the record but --

MR. WIGGERS: No, this would not even be in the record. This has not yet been submitted by plaintiffs unless it's attached to their moving papers because this just relates to the Jones case. If Your Honors wish a copy of this order I can give you my copy here. I have interlined certain things.

JUDGE MILLER: I meant those petitions for the review of, or to ask the Commission to reconsider the granting of the Jones order.

MR. WIGGER: No, Your Honor, but I am sure that plaintiff's - one of plaintiffs' counsel probably would have a copy of his petition here in this Courtroom.

JUDGE MILLER: Probably. It had not been called to my attention. As I say, I have stayed away from that huge four boxes down there as much as I could.

MR. WIGGER: Your Honors, I'd like to close in this way by referring to the dissent of Justice Fordyce referred to by Judge Findley in the case of Baltimore and Ohio Railroad Company versus United States, 386 U.S. 372, 472, 1967 decision, and Judge Fordyce, with much perception said, "The history of the I.C.C. Proceedings is a source book for dilatory tactics and a monument to the successful burial of good projects by over-elaborate procedures manipulated by experts in the art." We feel that whatever may be the motivation, the result will be unfortunate delay and since we, the Interstate Commerce Commission, represent no party in this proceeding but the public interest, we feel that the public interest should be considered in the exercise of the Court's discretion.

JUDGE MEHAFFY: All right.

BY MR. JAMES W. BLAIR: With permission of the Court, I appear for 66 shippers who are intervening, asking they be allowed to oppose the granting of the supplemental complaint who sign themselves Daisy Manufacturing Company, et al.

I think I can answer some of the Courts questions that other people cannot because I am one of two lawyers who was at every day of this hearing from the opening hearing conference to the day oral testimony began to the day it closed.

The plaintiffs refer in their reply brief to the fact that certain briefs were prepared by counsel who took no part in the hearing. I appreciate Mr. Smith was not at that hearing and may well not have understood how that hearing was conducted. It was a consolidated record but the dockets were kept separate. The lawyers entered their appearance in the individual dockets as protestants to individual cases. For example, when Mr. Smith's client, Arkansas Best Motor Freight took the stand and testified in the consolidated haring, I was not allowed to cross examine him. The reason I was not allowed to

cross examine him because they were not in my docket. They were not a protestant to my case nor was I allowed to cross examine Alamo or Red Arrow Freight Lines or many of the other plaintiffs in the original case here who were not in my case.

An example of how far this went is Wentworth Griffin, the gentleman in the blue suit, entered an appearance for a protestant, Time D-C, who protested the Jones application, but because he did not enter his own appearance in the Jones docket he was not allowed to cross examine witnesses who appeared solely in testimony of the Jones case, so that although this case was conducted on a consolidated record there was never a misunderstanding on the part of anybody that the cases were separate cases.

Now, when the order came out granting Johnson, Bowman and Red Ball and the case became administratively final, their case could be taken to court. The order also denied four other applications and their cases could have been taken to court by them. The Jones case was kept alive. It was reopened. It did not become administratively final. Now, if this

case had already been decided today, if this case had not drug on -- I would not say drug on because I know how long it takes to brief the case -- but this case was filed in this court some eight or nine months ago. If it had already been decided there is no way that I - not I but Jones Truck Lines certificate, there's no way that the Interstate Commerce Commission of the United States of America could be sued to enjoin the Jones certificate in this court because there would be no venue because there is no party in interest who is a protestant to the Jones case who even begins to exhaust his administrative remedies who has his principal place of business in the State of Arkansas, and in my opinion representing sixty-some-odd shippers that I represent, the basic purpose of this motion is to further delay the Jones certificate and these other certificates that have already been delayed eight years. It's been a masterpiece of delay.

Now, if Jones were brought into this case I think the Court would want to give Jones a fair trial. It took something over a year to brief this case the first time it was

ever briefed. It has taken several months any time anybody has ever tried to brief it. I once locked myself up for 30 days and abstracted the record for 18 hours a day and only got a third of the record abstracted. I believe the court would be obligated to give Jones ample opportunity to brief this case and I don't think the court could be persuaded it would not take months because it would take months.

I think the Court may not appreciate also that territorially the Jones case in the way the grant came out was even more effectively severed in interest from the rest of these cases. All of these cases originally revolved about an axis of Atlanta, Georgia and Dallas, Texas and traffic between those two towns. Collaterally, also Birmingham and Dallas, Texas and Birmingham and Atlanta. The Jones certificate as proposed to be issued is restricted against handling traffic between Atlanta and Birmingham or between Atlanta and Birmingham on the other and Dallas, Texas.

Now, Judge Williams, you asked counsel for the Government a question that I think shows somewhere that someone has confused you about

that Order of May 29th. What happened was that the Jones order was re-opened; our case was re-opened on my filing a petition for reconsideration on behalf of Jones. The Commission then granted in December 6 a Jones grant but restricted it against the Dallas, Texas traffic on the one hand and Atlanta and Birmingham on the other.

Six or seven plaintiffs, none of them Arkansas companies that filed petitions for reconsideration to the grant of the Jones case raised as one of their questions in the Jones grant, you restricted them against Dallas on one hand and Atlanta and Birmingham on the other but you did not say anything about the commercial zones, so that means that they could go out to Arlington which is in the Dallas commercial zone, and they could handle traffic from Arlington to Buckhead which is in the Atlanta commercial zone. Well, when the Commission issued its order of May 29th, I don't know as I would say they voluntarily changed it, Your Honor. They went ahead -- In that order what they were doing was denying the petition for reconsideration, but when they denied those petitions they spelled out that Jones would also be restricted against handling

traffic from Dallas commercial zones to Atlanta and Birmingham commercial zones and vice versa.

Now, Judge Miller asked the question about the Johnson authority. The Jones authority is granted and Johnson authority as granted do not come into play, any kind of interplay at all that I can see because what Jones is primarily left with is authority from the points it has authority to serve in Missouri, Kansas, Arkansas, Oklahoma to Atlanta and Birmingham which are points it did not have authority to serve, and it would also pick up for the first time points on U. S. 82 of Texarkana, Crossett, Magnolia -- I don't remember all of them, Strong, a little town which it does not have the authority now to serve.

Now, the Jones case differed greatly from the other cases in that the other cases were concerned to a great extent with time in transit. How long did it take to move a shipment. A lot of the Jones case was made on cross examination when Jones got the operating witnesses of Time D-C and Transcon and Campbell and Gordon to admit on the witness stand that their company was not serving certain towns at all

that it had authority to serve, and I have attached as an appendix to my brief references in the transcript to the fact that they were not serving these towns at all or they were not handling certain types of traffic at all. It was not a matter of how long. There was no service whatsoever.

Now, the Commission in its reconsideration recognized that none of these other applications would meet that situation up here in the hills of Arkansas and the hills of Oklahoma and the hills of Missouri and to allow these people to come in at this point and further delay the Jones certificate and assuming they make an argument for T.R. I don't see how they can make the same argument for T.R. they made against these other certificates because its not revenue they would lose because they're not handling the traffic anyway. It would seem to me that you would drag in a lot of new issues in a case that has already been briefed. You would further confuse something that has bothered my mind for eight years anyhow, and so I would submit on behalf of the supporting shippers that to allow the supplemental complaint would delay all

these cases unduly and it would allow the plaintiffs to seek a forum which they otherwise could not seek. It would do one other thing. As I understand, and I've not heard them address themselves to it, the plaintiffs seem to be all attacking the Jones certificate. I could not believe that when I saw it because a number of them had at various times for various reasons said "We will not protest this Jones certificate" and to find Alamo and Red Arrow and Central signing a pleading saying they were opposing the Jones certificate bobbled my mind and I called Jones Truck Lines and said "You all may not be able to believe this", and they said they could not either, and so Mr. Wiseman who is in this room called Central and Alama and Red Arrow and Eagle and said, "Have you all authorized anybody to appear against the Jones certificate?" And they said, "No, we have not. We never opposed it. We do not now oppose it."

One of the plaintiffs who exhausted their administrative remedies and who would be entitled to oppose it, Red Lion Transfer and Storage Company, said "We have instructed our counsel not to go forward against the Jones

certificate", so I don't know who my enemies are. I am at a loss here to find which plaintiffs are attacking the Jones certificate because they had it, plaintiffs in the captioned cause, which is all sixteen of them, most of which do not have any standing to attack Jones' certificate, so if the court brings the Jones case in, it's going to have a whole new line-up of parties in interest.

It is going to further complicate it in that I think then realistically some proposed motions that my intervenors have filed, if the supplemental complaint is allowed to be filed, to strike parties in interest or to strike parties plaintiff and to dismiss the complaint, and a number of other issues that are not present in this case will have to be heard by the court. I would not think that the court would want to further complicate this case by doing that. As to whether it can do so under the discretion of the court and as to whether these carriers can lie back in the weeds and come in for the first time when they have not shown to the I.C.C. any interest in the Jones case, I pointed out in my memorandum brief that, and I am aware of the doctrine of exhaustion of administrative remedies

is not a brand new doctrine and the Court, if it finds some compelling reason such as there is not an adequate administrative process can say, "Okay, we will not apply that doctrine", but I know of no attack on the administrative process of the Commission. I know of no allegation by the plaintiffs that they have not had an opportunity to exhaust their administrative remedies, and the fact that Arkansas Best and Mercury Motors and all of these others chose not to do that, they ought not to find some cute gimmick here by this supplemental complaint and be allowed for the first time to attack the Jones certificate. To me that's not fair play. To me that is not fair to government. That is not fair to the I.C.C. Is surely not fair to the 222 shippers that said seven or eight years ago they need the Jones service, and how many years are they going to have to wait for a final decision on that. It begins to be a process that is economically and judiciously ridiculous, but I think the court ought to be aware, too, that there might be further complications.

If the court is going to take every case that affects this case into this case,

the plaintiffs, as my affidavit filed on behalf of these show,, are getting new authority every day. The competitive situation changes. Maybe some of their applications ought to be brought into this case if we're going to drag this one in. Where do we stop or start them. Why not stop before you start.

JUDGE MEHAFFY: I was going to ask you how we could do that.

MR. BLAIR: I could say that you could do it by, number one, denying the motion to file the supplemental complaint. Then all my other pleadings are unnecessary. That wipes all them out. I believe if you deny the motion for supplemental complaint you will find that Johnson, Red Ball and Jones will withdraw their motion to dissolve the T.R. I think you'll end that problem and I believe they will ask for -- I believe they would be willing to argue the case on the merits today, and I don't know why it couldn't be argued today. Everybody is here. And that case could be decided, or it certainly could be argued and decided on August 13th on the merits.

They have said repeatedly in the briefs -- there's 1100 pages of briefs that we've

got to assimilate, or do something about it.

MR. BLAIR: I think the court would be doing themselves a favor to deny the motion.

JUDGE MILLER: I don't know about that. We can't on --

MR. BLAIR: I think it's in the discretion of the court to deny this motion. I am not sure it's within the discretion of the court to grant it. I don't know that the court can subvert the venue statute, 28 U.S.C. 1398, and drag Jones into a court that he could not be drug into any other way by saying that this is a supplemental complaint. It's not an occurrence in that case. It was on a separate docket. It had separate parties, had separate issues, and the trial of the case, cross examinations and appearances were kept separate. It's true the record is consolidated but really is just another public and convenience, necessity in this case. It does not begin to compare with the magnitude of Arkansas Best's purchase of Youngblood or the many other expansions that some of the other plaintiffs make.

JUDGE MILLER: Don't mention Youngblood. I've got that one, too.

JUDGE WILLIAMS: Aren't you saying that a great portion of this voluminous record does not apply to the original suit by Johnson, the three carriers, and that we've got a tremendous amount of record that is not competent?

MR. BLAIR: Let me give one example. The Roadway application did not have anything to do with anything in this and you've got a couple of hundred witnesses in there for Roadway and a territory, and the only thing they had in common was that they was in the case anyway and wanted their case heard, and some of the protestants to their case were in the case anyway and truthfully, Your Honor, does not have anything to do with the issues before this court and that's several thousand pages of the record.

JUDGE MILLER: All right. I believe we have your ideas.

MR. BLAIR: All right. I do say I have some peculiar knowledge. I was there every day and if the Court wants to ask me any questions that I could draw on that knowledge I'd be happy to answer it.

JUDGE WILLIAMS: Let me ask one other thing. The order that is appealed from here is not a consolidated order appeal; it's three separate individual orders that have denied these three people any remedy.

MR. BLAIR: The docket was carried under a lead docket of Herron. The reason for that, it is traditional on a consolidated record you take the lowest M.C. number and you use that as the lead docket, but I think you will find that when orders came out if they affected everybody they had each ones docket number on there. If they affected only certain carriers, they only had the lead docket and those certain carriers' docket numbers.

JUDGE MILLER: That's what this was from.

MR. BLAIR: I think when those orders be granted they would have the lead docket and their docket numbers but they would not have the other docket numbers, and in my case it was down - the only one left alive, crippled though I was, was M.C. 111231, sub 6-7, which was the Jones docket.

Thank Your Honors.

BY MR. CROSS: Now, if Your Honors please, I represent Johnson Motor Lines, one of the intervening defendants, and by agreeing to conserve the courts time I will talk generally about the interest of the intervening defendants in the original action, the action filed last October.

You heard the Commission say that it does not waive venue because of various circumstances. You have heard Mr. Blair tell you and I'm sure you can see that if Jones is brought into this case it is bound to make delay and lots of it. We have a magestive counsel in Mr. Blair and his enemies over here. There will be more motions, more procedural gimmicks going on. This case, if Jones is brought in, will not be ready to submit it, I would estimate, until the first of 1974, perhaps later.

Meanwhile the intervening defendants, Johnson, Bowman and Red Ball, have been restrained - they have not been restrained but the Interstate Commerce Commission has been restrained from implementing the ord of certificates to Johnson, Bowman and Red Ball. We're sitting here, as a practical matter, the sufferers under

that restraining order. But for that restraining order Johnson and Bowman and Red Ball would have the certificates, would have instituted the service that the shipping public testified to in this case over and over again, so we are the ones hurt by the delay.

We have fully briefed this case. We have been confronted, Your Honor, with plaintiffs brief, and I hesitate to use this word but which really are a smear campaign against the Commission and against us, the intervening defendants, primarily Johnson, which have so little merit and if we ever get to the merits we will show you that, that is delay. It has to be delay. So that we are the ones that suffer by the delay.

As undoubtedly this motion which came in here June 29th, it triggered Johnson's motion to dissolve the temporary restraining order. It is obvious that if this case comes in, the court ought to act on the T.R.O. and more readily on the application for preliminary injunction. Since the application for preliminary injunction and the criteria for granting or denying of it is the liklihood of success on the merits, there ought to be at that time - we're ready to go - on the

merits of this case. Let's get to these merits. Let's not wait for Jones to come in here, argue its merits, then get to our merits and keep this in mind, oral argument is not enough. The court has to make a decision and it seems to us inevitable that if the court lets Jones' case come in here, that it would necessarily then delay its disposition. It could hear the case tomorrow but it would necessarily mean that the disposition of the original complaint, the decision on the original complaint, would be held in abeyance until Jones was ripe, sometime in the early next winter. Then we would get our decision in a consolidated decision. But the intervening defendants who have been before this court since October are ready to go now on the merits. They want the decision on the merits now.

The lifting of the T.R., and I want to be very practical, would not give us complete relief. If the court, for example, is thinking well, we will take under consideration lifting the T.R.O., let these fellows get their certificates, let them get operating, then we will keep the case going, we'll let Jones in, we'll keep the case going 'til next winter sometime

when we can submit both of them. That is not a solution, Your Honor, and I speak for Johnson in this particular.

The service that the public supported the Johnson application for, was the handling of small shipments primarily. There was other, but primarily Johnson is a small shipment carrier. If it gets the certificate and it is faced with this, if it gets the certificate by lifting the T.R.O. and has to sit here then to worry about these merits until next winter or whenever the court could decide the consolidated cases, assuming Jones comes in, is in this dilemna. It cannot go out and invest the money needed to handle small shipments. Trucking companies cannot pick up and handle and distribute and sort and segregate small shipments without the investment of considerable funds. As prudent businessmen, Johnson - to its stockholders Johnson could not as a prudent businessman, invest the money in buying terminals and - in all the new cities its' going to serve, pick up delivery equipment, sorting and segregating equipment and institute this needed, the public needed small shipment service while this case was sitting here having been fully briefed

now on our part of it and waiting for Jones to become ripe. That would not be prudent business. Now, Johnson could do it and it would be some benefit to Johnson to have that certificate issued. It could get started. It could handle certain truck loads. It could arrange intermediate type of handling. It could provide some of the service that the public needed, but it is certainly, as a trudent business man, could not invest all of the money needed to provide the complete service they needed.

Now, just one more point. Your Honor, Johnson does not oppose Jones. The grant to Jones and the grant to Johnson are completely separate. There is not one common point on the Jones system that is on the Johnson system. But what plaintiffs are doing is asking Johnson to sit here until they bring the Jones case here, try the Jones case, then decide Johnson and Jones together, the awards to them, decide the agency or Commission proceedings, so there is no relationship. Johnson did not oppose Jones before the Commission. Jones did not oppose Johnson. They did not even participate in these other cases, and the cases were separate and distinct. Each had

their own separate docket so that we're the ones hurt by the delay. The delay is inevitable. The offer to hear this case or try it promptly as a condition to bringing in the supplemental complaint just is not acceptable, Your Honor. Trying a case of this kind is this. We're in appellant procedure. There is no trial. Argument on the merits. So that any time the three judges can get together, and I know that's difficult, a difficult process, but any time they can get together they can hear the oral argument. The trick is the disposition, and it's certainly -- If you let that supplemental complaint come in here it must be in your minds that it takes a joint disposition because there would be no other reason to bring it in here in the first place. So it's the disposition we're concerned about, not just getting an opportunity to orally argue it. We are ready to orally argue it today and we think if you deny this motion and you want to take up the question of the preliminary injunction, we would ask that you merge it right into the permanent, hear our argument, take it under disposition and decide it promptly.

Thank you, Your Honor.

JUDGE WILLIAMS: Before you go, do you concur in Mr. Blair's explanation of the consolidated case known as the Herring case being nothing but a convenient manner in which a multitude of cases have been carried along separately and individually?

MR. CROSS: I do, Your Honor. I think Mr. Blair said there were two lawyers that were there.

JUDGE WILLIAMS: Is the evidence that composes our record then a great portion of it in your opinion is not admissible, should not be considered by this Court?

MR. CROSS: Certainly as Mr. Blair pointed out, in the Roadway case you've got a lot of evidence down there which is in the Roadway case. It's not here and will never be here. Roadway withdrew it. The evidence the shippers gave for the Johnson service is not the same evidence that they gave as to the need for Jones' service because the two authorities aren't the same. They're different, territorially different.

JUDGE MILLER: Is this footnote -- I think this is true -- Does anybody dispute this footnote on Number Three on Jones brief that was submitted by Mr. Cross on the 23rd?

MR. CROSS: That's me and I have that memorandum in front of me. Footnote Three on page Three?

JUDGE MILLER: It's grounded on evidence of better need of transportation between the eastern seaboard and the Gulf states on the one hand and on the other specified cities, Mississippi, Louisiana and Texas, that Jones' award is grounded on the public need for better service between Arkansas, Kansas, Missouri and Oklahoma on the one hand, and on the other, Birmingham and Atlanta. That is the way it works out?

MR. CROSS: I wrote that, Your Honor, and I think it's the facts. Whether someone disputes it would be up to someone else to say.

JUDGE MILLER: That gives explanation to the order that the Commission entered in May - I mean on - well, it's attached to Exhibit 8 to the Complaint - to the Motion in this case where they corrected their original order.

MR. CROSS: I would not phrase it a correction. They reconsidered the Jones docket which was their second docket. They reconsidered it and took a different action on it, but I don't suppose - well, it's a matter of semantics or what you call it, but it's really a reconsideration of an order.

JUDGE MILLER: In that original order as counsel pointed out, traffic moving between Atlanta, Georgia and Birmingham, Alabama, and traffic moving between Fort Worth and Dallas, Texas on the one hand and on the other, Atlanta and Birmingham, Alabama, that was stricken.

MR. CROSS: As I understand the Jones award, Jones - the Commission in its second decision in Jones restricted the Jones award against any service between Dallas and Atlanta or Dallas and Birmingham so that it ends up that the Johnson award --

JUDGE MILLER: And in their commercial point zones, too?

MR. CROSS: Yes, Your Honor, and it's that award that makes the distinction between the Johnson. Johnson, for example, got authority between Atlanta and Dallas. Jones did not get authority between Atlanta and Dallas by that restriction.

JUDGE MILLER: That correction or change of that order was necessary because of those very facts.

MR. CROSS: Johnson and Jones were not in a comparative situation.

JUDGE MILLER: I understand.

MR. CROSS: That restriction in Jones just made it completely different awards to serve different public needs.

JUDGE MILLER: All right.

MR. CROSS: Thank you, Your Honors.

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MR. SMITH: I have just a few brief remarks I'd like to reply if I might.

JUDGE MILLER: I don't know of any reason why you shouldn't.

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BY MR. DON A. SMITH:

When we started out several hours ago it was my understanding that we were going to argue the question of whether or not the plaintiffs would be allowed to file their supplemental complaint. Johnson had filed a brief in opposition. The Government had written a letter. And Bowman had filed something this morning and had given it to us.

Without attempting to mislead the Court and following the characterization of Judge Miller, I thought we were going to argue two things. Number One, is there venue? And Number Two, will this create delay.

We have had two citations presented to the court. One was from a dissenting opinion in the Baltimore Ohio case which Mr. Glanzer said was applicable to the plaintiffs, characterizing us as being experts in delay. The second citation was a 1949 citation, United States versus Interstate Commerce Commission, which I think is a proper way that we should consider the Interstate Commerce Commission in this matter, and they refer to the Deficiencies Act.

Now, I respect all of these attorneys. I don't particularly appreciate being called an expert in anything because I don't consider myself one, but the derrogatory remark of being an expert in delay, I certainly do not appreciate.

Now, we have written a brief and we have argued to this court that our supplemental complaint is not filed for the purpose of delay. I have called Mr. Cross on the phone, I have written letters to everyone saying that we wanted to argue this case before this Court and Judge Miller had recommended the week of August 13 as being available.

We have listened this morning to the contentions again, "You're just going to delay". Well, I'll tell you what. I want to make this proposition to the Court because I think I am going to do the Court a favor and I know I'm going to do myself a favor. I don't want to have to listen to any more oral arguments. I don't want to be accused of being cute and making up gimmicks or using smear tactics or being an expert in delay. I suggest that with this Court's permission that we bring those four cartons of documents up there,

have them marked as an exhibit in this proceeding, and I assure you that the plaintiffs in this cause will submit to this Court recommended findings of fact and conclusions of law within seven days from today, and you can consider this case on the briefs without having to go through the ordeal of listening to any more oral arguments.

JUDGE MILLER: You're talking about the main case?

MR. SMITH: Yes, sir. The one filed on October 4, 1972, and the one that we're just simply trying to bring this court up to date on with the subsequent orders that have been issued by this Commission.

I want to put at rest once and for all that we are not here to delay. The Federal Rules of Civil Procedure give the court the prerogative to hold separate trials. We're asking you to do that. We're also asking you to follow that procedure and we will eliminate this question of delay and we want you to decide it and not worry about the Jones case except as it relates to the arguments that we have advanced in brief.

Now, I'll get back to the next question, this question of whether or not they waive venue. The Interstate Commerce Commission

says we've got a brief but we don't have it in final form and we're not going to submit it to you. Did you hear any cases cited in there that indicate the question of venue as even an arguable point on supplemental complaints? You did not. Did you hear them challenge the reading of 28 U.S.C. 1398 where it says "Any party in interest". Did not say one thing about having to be a party before the Interstate Commerce Commission.

Gentlemen, I have an Interoffice Memo that we prepared when we were researching the question of filing the supplemental complaint. It does not have a caption on it, but I'll be glad to run down to the Clerk's office and Xerox it and ask the Court to consider 49 U.S.C. 8305 Section 17 (9), 28 U.S.C. 1336 (a), 28 U.S.C. 1398 (a), 28 U.S.C. 822, 23, Atlantic Coast Line versus I.C.C., 149 Fed. 449; Alton Oil Company versus United States, 315 U.S. 15; The Encyclopedia of Federal Procedure, Third Edition, Section 73.123, and all the other cases that we have got in this to support our position.

No one filed a motion to dismiss this case for improper venue. This Court has gone through almost two and a half hours of listening to people talk about how they were in the hearing room for a

long time and how they understand this thing and we never have got to the gut issue and that is who is challenging the venue in this proceeding and for what reason and based upon what authority. There is no authority. That's why they can't show it to you. That's why they want to talk about delay. We put that to rest. Now, let's get on with the business of the day. We're asking permission of this Court to file the supplemental complaint.

Judge Williams asked an extremely penetrating question, several questions. I was interested in the explanations. The first question that he asked was, "Now, gentlemen, do you consider that the Jones case is completely separated than the Johnson case, for example?" And the response was, "Yes". If you will look at the order which is attached to the 114 M.C.C. and you look at page One, the Order of the Interstate Commerce Commission dated 30th day of December, 1971, as the lead caption Herring Transportation Company, there is not any order under Herring Transportation Company. Has McLain, Red Ball, has Deaton, Has Floyd Beasley, Strickland. And we get down here to Bowman, Johnson and Jones, and then the Order starts to read -- it was not a separate order. It was one order. In 117

M.C.C. the Interstate Commerce Commission, and I [illegible]ted from this before but I would like to review it with the Court for just a moment. The application of Jones, quoting from page 587, and the applications of nine other motor common carriers were heard on a consolidated record and were the subject of a single report and recommended order by two Administrative Law Judges who recommended that all of the applications be denied as indicated in Herring Transportation Company, giving the lead docket and citation, and it goes on and talked about of those applications filed exceptions to the Judges' recommended Order, four southwestern carriers, namely Herring, Red Ball, Strickland and Jones, generally sought to extend their operations to Birmingham and Atlanta. In other words, they are talking about these people conjunctively because that is the way it was heard. You have read their briefs. You have seen every one of them, start out by saying "This was the largest motor carrier operating case. We had 900 witnesses". And you have heard that every since we started until today when Judge Williams asked the question and they looked down and found out that they had been trapped. Now, all of a sudden we have got to quick step. No,

no, don't consider all that record. Just consider what we had to say. Read the Commission's report. It does not talk about individual witnesses as such. It talks about collectively this so-called need. Those are the issues before this Court. That is why we want to file the supplemental complaint and that is why we have brought it as a subsequent action, occurrence or event to the initial basis for our litigation here, and Mr. Blair said he realized that I did not have the benefit of sitting in there in the hearing all of those years. Neither did the Court. But the Interstate Commerce Commission, and when he talks about Texas, Oklahoma, Kansas and Missouri, he forgot to mention one very important thing and that was that the Interstate Commerce Commission also granted authority, and I will use his words, from the hills of Chicago to the hills of Atlanta, Georgia, in direct competition to Arkansas Best Freight System.

Arkansas Best Freight System is a proper party to this action. It was a plaintiff originally and it is prepared to submit its affidavit in support of the grant of the temporary restraining order and this Court has got jurisdiction whether or not they file their brief or whether the

Interstate Commerce Commission wants to waive venue or not.

We need to get to the law of this thing and the law is this court has jurisdiction. This court has venue, and if we go out and this court says, "Don't file your supplemental complaint and we deny it", there is not one thing that prevents us from going back to this Clerk's office and filing a complaint and asking for them to be consolidated. The record is already here. It's in front of us.

Judge Miller asked a question concerning whether or not those petitions for reconsideration were filed. They are filed in this record, Your Honor, and they have been as they were tendered by the plaintiffs in this case. We have given copies to all of the defendants and intervening defendants of what we have put in the record and under the Jones case.

JUDGE MILLER: They are mentioned in Exhibit Eight, too.

MR. SMITH: Yes.

JUDGE MILLER: I knew that. It's a little bit difficult to keep all these things in mind.

MR. SMITH: I don't know whether it was because

Mr. Cross was primarily interested in Johnson that he made the statement that Jones and Johnson are not in opposition to each other. I think important and of significance is the absence of the statement which he made to show that there was conflict in the authority purportedly granting to Jones that involved Bowman and Red Ball. Then if you think that this was just one individual little segment to Jones, one little individual segment to Red Ball and to Bowman, that's a misnomer and you should not be misled. Jones, in its evidence, is just as much an integral part of the record before this court and the decision for review by the Interstate Commerce Commission as any other party before that proceeding.

Now, the question was asked Mr. Glanzer, and I certainly am interested in that response. They said -- I believe his statement was the Jones matter was decided by the Commission independently. Well, the part of the record that Judge Miller asked him to read did not coincide with his earlier statement. But I would point out to the Court and I think this is veryimportant, there were three carriers in the proceedings, Bowman, Johnson and Jones, that referred to themselves as the trinity.

The put evidence on in conjunction with each other, and to come in now and say "We don't know each other and this was a separate action" is almost laughable and it's laughable even to the greater extent that when Mr. Blair filed his brief with the Interstate Commerce Commission in support of his petition for reconsideration he said Interstate Commerce Commission, the witnesses that you used to grant authority to Red Ball and Bowman were my witnesses and yet you deny my application with my witnesses. It's not fair. He used that same argument again today, that it was not fair. The significance of it is if you read the Jones decision in 117, the reference constantly is that - to the Herring case. The evidence before the Commission in the Herring matter. It was all on this consolidated record. Do not be beguiled into believing that it was separate and apart.

One other thing. In 117 M.C.C. the Commission adopted the report that was in 114 M.C.C. and referred to in its reference to the Trial Examiners.

JUDGE MILLER: They made the same statement in the original.

MR. SMITH: That is correct. So in conclusion,

we're asking the court for permission to file our supplemental complaint. Since we've gotten into the other issues we ask this court, (1) to recognize that this Court has venue because of A.B.F., Mercury Motors, and (2) we ask this court to allow us seven days to submit our findings of facts and conclusions of law, take that case and decide it as it was originally filed and has been supplemented.

JUDGE MILLER: The original case was decided.

MR. SMITH: Yes. There's things that we have brought before the Court and they should be considered, but as far as Jones and its T.R.O. we ask the Jones not to delay for the benefit of Johnson or anybody else. Decide the case and don't go through the ordeal of having to listen to me and other people argue the thing. Let's have it submitted, and we'll mark that for identification.

JUDGE MILLER: What do you mean by that, Mr. Smith? Decide the whole case? And the case as made by you in your supplemental complaint?

MR. SMITH: No, Your Honor.

JUDGE MILLER: Well, then, I understand.

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BY MR. STEVENS: If it please the Court, I find myself in need to make a statement by virtue of certain statements that have been made in pleadings and from the rostrum today.

JUDGE MILLER: And you are --

MR. STEVENS: Mr. Stevens.

JUDGE MILLER: Let me talk to these other gentlemen --

MR. STEVENS: I just want to make an explanation to the court, not submit any further argument.

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(At this time the Judges confer among themselves)

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JUDGE MILLER: All right, Mr. Stevens.

MR. STEVENS: Mr. Smith can make it for me. Either way. But as counsel I feel it imperative that I clarify a representation that has been made to the Court.

THE COURT: All right.

BY MR. SMITH: Mr. Stevens, I'm sorry I failed to mention this, but it is an important consideration. In the affidavit that was filed by Mr. B. J. Wiseman representing Jones Truck Lines and referred to by Mr. Blair in his argument, a statement was made concerning Red Lion Transfer and Storage and its

participation. I believe the Court, in referring to Mr. Wiseman's affidavit, will say that Mr. Wiseman has talked to somebody who he has not named and that they are not in opposition to the Jones matter or words to that effect and that they instructed counsel not to participate.

I do not know whether that evidence is probative or not and I really seriously doubt that it is, but because it was said in the affidavit and because it has been referred to in arguments before this court I think it is important that this court hear the telegram addressed to Mr. Stevens, Attorney at Law, Suite 700, Petroleum Building, Jackson, Mississippi. "I assure you that my company continues to oppose the Jones Truck Lines Sub. 67 case since the approval would greatly impair my company's ability to continue rendering adequate service in Arkansas." Signed, L. D. Davis, Secretary-Treasurer, Red Lion Transfer and Storage Co., Inc. And I tender that telegram into the record with the affidavit of Mr. Stevens so that there will be no mistake about that question.

JUDGE MILLER: All right.

MR. BLAIR: Could I be advise d the date of the telegram?

R. SMITH: 7/20/73 it appears.

R. STEVENS: I want to make it clear, if I may. I am counsel of record for Red Lion. I have been counsel of record for Red Lion for years before the Interstate Commerce Commission. No one has ever asked me to state the position of Red Lion, and when this came in a pleading that I have received instruction that my client feels thus and so, it did not come from me, and I wanted to be sure that I was current in my representations to this Court concerning the position of my client, and when they called me I asked them the question.

JUDGE MILLER: And you found out you had not been fired?

MR. STEVENS: I found I had not been fired.

MR. BLAIR: If it please the Court, I have a gentleman in the hearing room who says that he has had personal conversation with L. D. Davis that is absolutely contrary to that telegram and the only thing I know, if we're going to get to that issue, is put Mr. Davis under oath and interrogate him as to whether he has told more than ore story or how this confusion came about.

JUDGE MILLER: I don't think that's too material to the question before the Court. I don't

think it's reached the point yet in the supplemental complaint of dividing the sheep from the goats. We don't know whether there will be individuals or not or just class them all as one or the other. That's about what we're going to do. We're going to make some kind of a decision on this motion to file supplemental complaint and then, you know, if we permit it to be filed, to raise a lot of other questions.

* * * * * *

MR. MAURICE F. BISHOP:

May I be heard for a moment in response to the suggestions, or perhaps the stipulation proposed by Mr. Smith?

I am Maurice Bishop. I represent Bowman Transportation at this proceeding, one of the intervening defendants. If I correctly understood Don, Mr. Smith, his proposal was the three cases that are presently before this court be completely severed from any consideration of the Jones supplemental complaint or motion to file a supplemental complaint, and it is now ripe for judicial proceeding with dispatch and towards an early decision. With that we are in absolute accord. That is, insofar as an immediate decision is concerned and complete severance from the Jones case. That becomes a question then for this court in good conscience to determine and that is whether in the submittal and under that proposed stipulation this court feels that it can and would proceed with an immediate dispatch toward consideration of the case under review. An immediate decision on those issues, we join in that. If the court feels it can accomplish that we join in the

proposition that we submit stipulated facts or proposed facts and conclusions within the seven day period.

JUDGE MILLER: Go ahead.

MR. BISHOP: On the other hand, if there is any question Mr. Smith has likewise pointed out that he could, if he has venue, that he could file a separate lawsuit and we commend to the court that probably is certainly the most advisable course to pursue so that no question can be raised. He says that he could file a separate lawsuit in this jurisdiction by going around to the Clerk's office. We commend that action. Then there would be no question in the world about the complete severance of the Jones case from these cases.

He pointed out correctly with respect to 114 M.C.C. that it listed all cases, but as the Court noted, if you could see that sheet, it listed all those cases separately with separate docket numbers and in the Jones case if you will look at that order which was the subject of the motion for supplemental complaint and as reported in 117 M.C.C., it makes reference only to the Jones application Sub. 67, completely separate and a separate case. Your Honor, you

had a question?

JUDGE MILLER: I believe you just about answered it except did you understand Mr. Smith to say that we go ahead and decide the case insofar as Red Ball, Johnson and Bowman are concerned and then take up separately the supplemental complaint?

MR. BISHOP: It was my understanding that his proposal encompassed two very important and critical things. Number One, is the submission, and Number Two is the decision, because it's the general public that is being delayed.

JUDGE MILLER: Just suppose we did that. Where would we come out? When you start falling you've got to find some place to light.

MR. BISHOP: That's why I say this Court in its conscience and its own mind would have to determine whether as a matter of judicial approach it could work that severance and all doubt could be resolved by a proceeding as Mr. Jones suggested, as Mr. Smith suggested, walk around to the Clerk's office and file a separate lawsuit. Then this court can proceed. Then the Court can proceed in an orderly fashion. If the Court has jurisdiction the Court will so determine.

JUDGE MILLER: I think you ought to file it in some other jurisdiction.

MR. GLANZER. I'll say this in answer to that. There's well over 100 jurisdictions in which it could be filed. There's well over 100 jurisdictions in which this case could be filed.

JUDGE WILLIAMS: Before you conclude, Mr. Bishop, I suppose the Court should take the whole thing under submission at this time. Is there any matter that has not been thoroughly briefed as far as you and your client are concerned that you would care to raise in additional oral argument?

MR. BISHOP: Insofar as the Bowman, Johnson and Red Ball cases are concerned, Your Honor?

JUDGE WILLIAMS: Yes, sir.

MR. BISHOP: Those have been thoroughly briefed and are ripe for judicial review. It would be this Court's determination whether they desired oral argument. There are some matters --

JUDGE WILLIAMS: In your oral argument would you have anything to add other than what you've already said?

MR. BISHOP: Have some brief answer to the reply brief which we feel raised some new matters. That

could be handled on brief likewise if the Court would desire, and it can be filed along with the proposed stipulations or conclusions of law and findings of fact that would encompass a suggested order to this court for its consideration.

MR. WILLIAMS: All right.

MR. MASON: Thank you.

* * * *

JUDGE MILLER: As I understand, that concludes the argument on reference to the motion to be permitted to file supplemental complaint and I indicated I believe the court would like to determine that question first before reaching the other questions.

We have got a pretty good understanding from the argument here that if that motion is denied I imagine from what was said here they would be glad to, you would be willing to waive your contention or motion that the T.R.O. would be dissolved if the Court went ahead and accepted the record here and approached it on a decision of the merits as soon as could be done.

MR. CROSS: Your Honor, we have a motion that the Court hear the application for the Interrogatory or Preliminary. That motion would raise the liklihood of success on the merits as one of the criteria for the granting or denial of it.

There is also before you the application for a permanent injunction. That goes to the merits. Those two things are absolutely integrally related, so we would suggest that you hear the application for preliminary

injunction that you merge it with the permanent injunction and act on them both.

JUDGE MILLER: But the point I was making, Mr. Cross, is this. Now, following that suggestion and submit the case today on the - the main case today, you can't just wave a wand and up comes an opinion. It is going to take some time on that. Just how much time it will take I don't know, but I will say this. Most of us are busy. I am probably the least busy of the bunch. I don't know just why but - because of the respect of age, you know, I am probably the least busy of all, but I don't see how an opinion could be prepared overnight on this case. I would not want counsel to feel like that it would be coming out next week. All I could say to you, it will come out just as quickly as it can. That's all I could say.

MR. CROSS: So much of this as I see it, Your Honor, is conditioned or is then related to the motion to supplement. If that is granted and that case comes before you that puts this thing in an entirely different posture as to delay, as to time for your decision, time for the submission

of the supplemental complaint. That is interrelated.

MR. SMITH: Your Honor, I am sorry, I don't mean to be Jack in the Box about this thing. This entire argument of trying to correlate delay with the supplemental complaint is preposterous. This Court has Federal Rule 20 and 42.

JUDGE MILLER: I did not construe that and I don't believe the Court did, that said you had delayed, the delay that has been occasioned in the case, but I don't think you can put your finger on anybody, anybody's delay. The case has just been delayed. That's all.

MR. SMITH: The point I'm making, Your Honor, is this. Mr. Cross is trying to say, "Now, don't grant that supplemental complaint because it will cause delay". That is not true. Mr. Cross is here before this court representing one client and that's Johnson Motor Lines, and he wants a decision in that case. My proposal was that this matter be submitted today and we will furnish you requested findings of fact and conclusions of law and we ask the court to consider it.

JUDGE MILLER: On the main case?

MR. SMITH: On the main case. Now, that does not

have anything to do with his allegation of delay for the supplemental complaint.

JUDGE MILLER: Then you would want to submit a motion for T.R.O. in the case made in the supplemental?

MR. SMITH: Yes, but that would not interfere with this court's decision in the main case.

JUDGE MILLER: I understand, but there is also entered my mind -- I think I've got your ideas. Judge Mehaffy says we ought to inquire if anyone else has anything to say, to submit to the Court before we try to consider some of the questions that are concerning us right now.

MR. SMITH: The plaintiffs have nothing more.

MR. GLANZER: I have said all I have to say.

JUDGE MILLER: We're going to take a recess until 2:00 o'clock. In the meantime we will do a little conferring and try to make up our own minds and tell you something about 2:00 o'clock. Court will be in recess until 2:00 o'clock.

MARSHAL: Court is in recess until 2:00 o'clock.

RECESS

2:20 p.m.

MARSHAL: Everyone will rise. Court now resumes in session. You may be seated.

* * * * *

JUDGE MEHAFFY: Gentlemen, after due deliberation which most of you witnessed we have come to a conclusion on this facet of the case and I will ask Judge Miller - which will take an advisement - ask Judge Miller to announce it.

JUDGE MILLER: There is very little to say in the conclusion we have reached and that is simply this. We do not believe that there is a sufficient relationship between the motion to be permitted to file supplemental complaint and the issue that is before the court and which was attacked in the original complaint. Therefore, we are going to overrule the motion to file an amended or a supplemental complaint. I might add that we're going to have to put in that order without precedent - I think it is surplus, I don't think it will amount to anything anyway, but we feel like justice to all parties concerned can best be had by separate independent proceeding by these plaintiffs who are dissatisfied with

the order entered relative to Jones filing a separate suit. We feel that is the way to do it because this record, although tried on the same record by stipulations or otherwise, it will take you six months to separate the wheat from the chaff in trying the Jones case. I say six months - it will take me longer than that, but it will take some of you a good long while to do it.

There are a great many reasons which I am not going to enumerate because I don't think it is necessary. The order will go denying and dismissing the motion for authority or permission to file supplemental complaint.

Now, that brings up the motion of the Government and the other defendants relative to the setting aside for the time being the T.R.O. and with that the court feels that motion if presented would be overruled and I understood that you might withdraw that request in view of the fact that in a decision of the case, the main case, we will be confronted with the question not only preliminary,

but permanent injunction, and I think it is possible, I think it is entirely correct to consider the question of injunction in connection with the merits of this particular case so what we expect to do, unless there is someone that desires to submit further arguments on the merits of the three of the main case, the first case, the first complaint, if there is no further arguments to be submitted on that, we are going to submit that case and take it under consideration and proceed to prepare some decision in that case as quickly as we can. Now, that is the position of the Court. That's about all the Court has to say unless somebody does ask for the setting of a special date for argument on the main case.

I cannot understand how it can be made any clearer. I don't care how clear your arguments are, the question still remains there that is pretty hard to solve and so -- Now, there was one thing that was said by Mr. Stevens - no, it was - well, --

MR. JONES: Mr. Bishop, maybe.

JUDGE MILLER: Yes - that desired to file in view of some statements made in the reply brief from

the plaintiffs in this case, that you desired to file memorandum to refute some of those insinuations which I believe was the way it was stated. We have no objection to that, so if you want to do it you'd better do it in one weeks time.

Now, is there any other suggestions

MR. CROSS: May I have a brief moment to talk to my colleagues concerning my motion to hear the preliminary injunction today? I just want to chat with them.

JUDGE MILLER: Yes.

MR. GLANZER: I am not quite sure I heard what was said. Do I gather that the case will stand submitted on the merits at this point without further oral argument?

JUDGE MILLER: That is our present opinion about it. If anybody else desires to submit I say any objections to that, they may do so, but then we feel like the case has been thoroughly argued. It was thoroughly argued as a matter of fact, in November when the Court heard that motion for a T.R.O. It was pretty thoroughly argued then. But now since that time the briefs have come in and you can

say what you want to about them but they are pretty full.

MR. OULAHAM: I'm Courts Oulaham. I wonder if the defense counsel could have five minutes to talk among themselves because we certainly don't want to hold the court up this afternoon.

JUDGE MEHAFFY: You may. Court will be in recess then.

MARSHAL: Court will be in recess for five minutes.

RECESS

* * * * *

MR. GLANZER: Your suggestion is acceptable to us. The defendants would like to ask rather than seven days which was suggested by Mr. Smith who is local in Fort Smith - most of us have to get back to other cities and plane travel is not too easy for all of us - it would be appreciated if you would allow us, instead of seven days, until Friday, August 3rd, to put whatever replies we wish to in the mail to the Court.

JUDGE MILLER: Of course, those replies would only go to the new issues made by the reply brief.

MR. GLANZER: I understand that. That's our understanding.

JUDGE MILLER: I just wanted to be perfectly frank

about it. I have no objections. When did you say, August 3rd?

MR. GLANZER: August 3rd instead of July 31st, Your Honor. It's just another three days, because of the travel aspects and whatever additional matters any of us might have in other courts.

JUDGE MILLER: You don't contemplate coming back on that date, do you?

MR. GLANZER: No. My suggestion was that we be permitted to put whatever replies we had in the mail on August 3rd.

JUDGE MEHAFFY: That's all right. Why don't you take until about the 10th or longer.

MR. GLANZER: You're saying August 10th?

JUDGE MEHAFFY: Any time. I'm giving you more time, more time than you asked for, if it takes that to be reasonable.

JUDGE MILLER: I think they could get them in here by that time.

MR. GLANZER: By the 10th then, is that when you said, Your Honor?

JUDGE MILLER: It's all right with me. I don't care.

MR. GLANZER: We're willing to comply with August 3rd date.

JUDGE MILLER: The sooner you get them in here the

sooner we can get to work on them.

MR. GLANZER: If something develops that additional time is needed, the court is always in business and no problem, but we frankly intend to get our responses in the mail to the court not later than August 3rd which is about 10 days from now instead of seven.

JUDGE MILLER: That's all right. Did you start to say something, Mr. Smith?

MR. SMITH; I don't understand. Are we now opening the thing up for new briefs?

JUDGE MILLER: No. You did not understand what I said. Some of the gentlemen - I believe it was Mr. - well, they said there was some insinuations or statements in the last few pages of your brief, reply brief, that had not been mentioned before that he would like to have an opportunity to reply to those particular statements. That was what I had reference to. It's not going to be any briefs on the merits at all. Where is the brief? I can point out what it is.

MR. SMITH: If the Court understands it obviously then that's the ruling of the court and that is all right, but there's other matters that I think should

be brought to the court's attention, if you don't mind.

JUDGE MILLER: All right.

BY MR. DON A. SMITH:

First, I think it appropriate at this time, if we ask the court to have marked the record which we have earlier furnished to the court so that we will have made our tender of the record to this court.

Now, I would ask some representative of the defendants if this is acceptable so that this matter can be done at this time.

JUDGE MILLER: Whether it is acceptable or not it will be done.

MR. SMITH: Thank you.

JUDGE MILLER: A record is a record.

MR. SMITH: If the Court please, will we be allowed to submit to the court requested findings of facts and conclusions of law?

JUDGE MILLER: I'm glad you mentioned that. That's on the main case, the one we're taking -- Yes, I'd be glad to have it and serve them on each other just like you do, but get them to us because what these men are hinting to me pretty strongly, they want me to prepare something

for their criticism or for them to criticize and I want to get at it myself pretty soon. I have been at it some but I never did believe, when you've got to do something, you might as well to go ahead and do it, right or wrong.

MR. SMITH: If you please, Your Honor, we will in anticipation go ahead and prepare the proposed findings of facts and conclusions of law.

JUDGE MILLER: You will get them to me in plenty of time.

MR. SMITH: And we will await whatever this thing they are going to file is going to be to see if there are any changes to be made, then we will submit them.

JUDGE MILLER: There is not going to be anything considered by the court on the merits of the case. Just on those two or three items there that you got pretty raw about, and I don't mean that as a criticism.

MR. SMITH: It would not do me a lot of good if I took it that way. Now, Your Honor, one other thing. If you will recall in the structuring of the matter which you have heard today, I think representatives of Jones and representatives of the Interstate Commerce Commission contacted this court

and advised the court that if this court proved to be the forum of the plaintiffs in the Jones case that rather than enter a temporary restraining order without notice, that they be given time in which to be heard on the matter. This information was conveyed to us by Mr. Glanzer and we complied with that, as you know.

JUDGE MILLER: Yes.

MR. SMITH: Serving copies not only on Jones' counsel but also on all parties of record and asked the court to set a date for a hearing rather than asking for the temporary restraining order.

By agreement the Interstate Commerce Commission agreed to withhold the issuance of the certificate to Jones until July 27, 1973.

Now, by the action of this court in denying our right to file the supplemental complaint we are faced with three days from today on the issuance of that certificate because we complied with their request that they be given notice. We would like to ask the Commission if they would agree to agree to an extension of the issuance of that certificate for a period of thirty days to permit us now

to re-group and as Mr. Bishop indicated, there are other forums available so that we can prepare and file our lawsuit and request that the certificate be enjoined until it can be heard and revieved by the court.

JUDGE MILLER: I don't know whether we would have anything, have any authority to make a ruling on that or even submit a request, but Mr. Glanzer is here and he is Chief Attorney for the Interstate Commerce Commission. What do you think about that, Mr. Glanzer?

MR. GLANZER: I think I need some time to speak to people in Washington on it. I need at least ten or fifteen minutes to speak to the people in Washington on this, Your Honor. I don't want to deprive these people of an opportunity to bring their action in another forum, but I think thirty days is completely unrealistic at this stage. We have already adjourned the issuance of the certificate for a period of time.

MR. SMITH: At your request.

JUDGE MILLER: Yes, the certificate on Jones order.

MR. GLANZER: Yes, on the Jones certificate. I am prepared to speak to Washington on it in the next

fifteen minutes or so, if I can get through to them on the telephone, but I would also like to speak to the Jones people because they have a voice in this also, but I agree with counsel that they should be given an opportunity to find another forum. No question about that.

JUDGE MILLER: I think that I heartily agree with that latter statement but I doubt whether this court should enter an order just in thin air like this with nothing before it to base an order on asking the Commission to delay issuing the certificate of convenience and necessity, but that is a matter that ought to be reached by agreement between the parties.

I imagine if there's any options on it, amendments can always be made in some court to issue a T.R.O. That's what they're trying to avoid, of course.

Mr. Smith, suppose you and Mr. Glanzer talk, talk that matter over and see if you can't resolve that some way or other.

MR. SMITH: The only reason I brought it to this court's attention was because we had agreed to give them notice at the presentation.

JUDGE MILLER: I think it would be fair.

MR. GLANZLR: Yes. I'm not trying to step on anybody's rights.

JUDGE MILLER: I know you're not.

MR. BLAIR: If it please the Court, I think Jones - well, I've been here appearing for shippers rather than Jones I also represent Jones. Jones voluntarily, although reluctantly, agreed to let the issuance of its certificate be withheld and voluntarily extended that on a couple of occasions. I don't know how much more I want to do, but I would like an opportunity to visit with my people about it. I think I have a great deal of interest in how much time is involved.

* * * * * *

I think the Court knows I am taking an unreasonable attitude.

Well, I don't know whether a new case will be filed but I do think that in view of the action that this case has taken, I do think that these people ought to have an opportunity to contest the Jones without and I think, I guess I am old fashioned, if things are going to be reviewed by the Court I think it ought to be held in status quo whether it is a TRO or whatever it is except in extradionary case and I don't think that Jones Truck Lines will suffer and I am pretty sure that by the judging of the number of trucks running around on the streets and on the highways I doubt whether any ship- ould be seriously handicapped by delaying ten, fifteen, to twenty days; so if you can work it out, but if you don't work it out then you've got to file some kind of a make shift case and then amend it. You know there is always, as the old saying goes, there are lots of ways to choke a cat, so you can get your relief. Now, there was one other, well, I guess we had better just let that stand; now, there was another Order

that Mr. Blair, on all your Motions here --

MR. BLAIR: I would like to withdraw all those if the Court, please.

JUDGE MILLER: All right, I will - - enter, I will enter an Order ordering them removed anyway so I will just let you withdraw them. I guess that is about all we can do.

MR. BAILEY: My name is M. Ward Bailey, an attorney from Texas. My name is on all these Pleadings. This is my first appearance here. I just want to get my name in the record. If the case has already been submitted, I am not clear whether it has been or not, has it been submitted on its' merits?

JUDGE MILLER: On its' merits, yes, sir.

MR. OULAHAM: Your Honor, I am Courts Oulaham, representing the Intervenow. I am not clear, Your Honor, as to what it is that will be - - we will be permitted to file on August 3rd, because of certain statements were made by the distinguished colleague from Fort Smith ---

JUDGE MILLER: Well, let's see here, Mr. Bishop you raised the question --

MR. BISHOP: Yes, I raised the question. I said

there was some statements in the reply brief of plaintiff that we would like to respond to, very briefly; on the proposition of submission we ask for a few days to do it. This record would show that we have timely filed all of our briefs and will shortly file this Memorandum.

JUDGE MILLER: He was wanting to know what the statements were in a general way.

[illegible]: I state very frankly, in a reply brief it makes a statement that very frankly I am called on to respond for the first time in my 30 odd years of practice. In one section of the reply brief that certain factual statemnts that we made in that brief were inaccurate and that the legal propositions are unsound. I am not concerned with the legalities. I can understand how different parties with respect to legal propositions, how we would deal with them, I may be overly senitive but I am concerned on the proposition that a statement was made and was factually incorrect and I wish to point out the exact inaccuracy in the statements.

JUDGE [illegible]: May I make this suggestion; I don't think they are pertinent in this but for your

satisfaction can't you just file an affidavit

MR. BISHOP: Yes, sir.

JUDGE MURPHEY: We are not going to pay any attention to it, I will tell you that, but yet we don't want to have another round.

MR. BISHOP: It is just the first time I have ever been called on in Court in 30 years to make such a response.

JUDGE MILLER: If you are never accused of anything worse than that you are a good man.

MR. BISHOP: I hope so, Judge.

MR. BLAIR: Have you been a Commerce lawyer?

MR. BISHOP: Transportation and Commerce lawyers, that is what we call ourselves, but when I read that section and found out the other side might call you something else ---

MR. BLAIR: Maybe you have been in the experience you have had.

MR. BISHOP: If that is a situation to avoid we would join in and submit on the suggested proposed findings of facts and conclusions of law.

JUDGE MILLER: That is the way we do it, the best way to do it.

MR. BISHOP: All right.

JUDGE MILLER: We are not going to fix any time for

you to put them in here but it will be to your advantage to get them in pretty soon.

MR. BISHOP: We will in very promptly, Your Honor. That is very frankly what we had in mind, that is the portion we want to reply to.

JUDGE MILLER: Well --

MR. OULAHAN: My colleague here has clarified the matter; I was going to join with him but I am a trial lawyer, not a commerce lawyer and I have had poisoned arrows thrown at me before but they never hit me and never will. We will submit a very brief proposed findings.

JUDGE MILLER: Whatever is a commerce or trial lawyer or whatever it is makes it easy on the Judge; I guess that is about all then.

JUDGE MURPHY: I am not sure they understand as I do as I understand it; we will take this under submission?

JUDGE MILLER: That is correct.

JUDGE MURPHY: You've got to sell me and Judge Williams.

JUDGE MILLER: I want you to read the briefs and be familiar with it, then we will meet.

JUDGE MURPHY: I have read the briefs except those

that came in late.

JUDGE MILLER: I am not prepared to decide it today on the merits, so if that is what you are driving at ---

JUDGE MEHAFFY: No, I am driving at this; I think there might be a little of misunderstanding about the details which you related, the disposition you are going to make.

JUDGE MILLER: I tried to make it perfectly clear, we are taking this under consideration and dispose what was before us.

JUDGE MEHAFFY: If we do that, that is what I understood, if we do that I am not too disturbed about these agreements because we can put that in the Order.

JUDGE MILLER: You have tried enough lawsuits; you know there has always got to be window dressing, that is the way that goes, we have just decided on the record.

JUDGE MEHAFFY: Is that those four cartons --

JUDGE MILLER: I am going to let you take those down.

JUDGE MEHAFFY: If I understand it now, this Court will be in recess subject to call, not on a day certain but on call.

[illegible]

[illegible]ay could that be necessary; why would it be necessary to call the Court?

[illegible]y. They can come up with something else.

[illegible]: No, that won't.

[illegible]: I said subject to call; if we want to call it up can. I don't want to endanger this Court until this business is over but we will take it under submission and adjourn subject to our call.

JUDGE [illegible]: That will be all right; that is the way the Order will be entered anyway in the Clerk's Office.

JUDGE HEILMAN: Gentlemen, this Court is adjourned subject to recall.

MARSHAL: Court is adjourned.

****

C E R T I F I C A T E

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the Hearing had in the above styled cause at Fort Smith, Arkansas, on the 24th day of July, 1973; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said Hearing as shown by my notes.

Dated this 28th day
of August, 1973.

APPENDIX F

Joint Proposed Findings of Fact and Conclusions of Law submitted by the United States of America and the Interstate Commerce Commission filed August 13, 1973.

Civil Action No. FS-72-C-[illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION,

Defendants,

and

RED BALL MOTOR FREIGHT INC.,
JOHNSON MOTOR LINES INC., and
BOWMAN TRANSPORTATION INC.,

Intervening Defendants.

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

THOMAS E. KAUPER
Assistant Attorney General

JOHN H. D. WIGGER
Attorney
Department of Justice
Washington, D.C. 20530

BETHEL B. LAREY
United States Attorney
Fort Smith, Arkansas 72901

Attorneys for the United States of America

FRITZ R. KAHN
General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission

AUGUST 1973

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ARKANSAS-BEST FREIGHT SYSTEM INC., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

and

RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and BOWMAN TRANSPORTATION INC.,

Intervening Defendants.

Civil Action No.

FS-72-C-65

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

FINDINGS OF FACT

This is an action to set aside the decision of the Interstate Commerce Commission in Herrin Transportation Company, Extension--Atlanta, Ga., 114 M.C.C. 571 (decided December 30, 1971), granting common carrier authority to three applicants--Red Ball Motor Freight, Bowman Transportation and Johnson Motor Lines, Inc.--to transport general commodities by motor vehicle over regular routes between specified points, generally in the southeastern and southwestern portion of the United States. 1/

The proceeding was commenced by the filing of an application by Roadway Express, Inc. on December 7, 1964. By July 30, 1965, applications had been filed by sixteen other

1/ Generally, those points lie west of Atlanta, Ga., Birmingham, Ala. and Pensacola, Fla. and east of Houston, Dallas and Fort Worth, Tex. That territory is approximately bounded on the north by a line from Topeka, Kans. to Kansas City, Mo.

motor carriers, all seeking to conduct general commodities operations between points in the Southeast and Southwest. As notices of applications were published in the Federal Register, protests were engendered from carriers with existing authority. In order to develop an orderly procedure for handling the applications, a prehearing conference was held on September 9, 1965. Following the conference, ten of the twenty applications were selected for consolidation in one proceeding.

The territorial scope of the applications varied in accordance with the existing authroities of the ten applicants[2/] and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories, by area. For southwestern applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the Southeast. Five southeastern applicants, Bowman, Johnson, Floyd & Beasley, Deaton and Baggett[3/] wished to obtain authority to the Southwest, primarily to Texas points.

Two hearing examiners were assigned to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about eighteen months. Nine hundred and fifty witnesses testified on behalf of the applicants. Of that number, nine hundred and thirty-three were public witnesses,

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2/ The full name of each applicant and the docket number of its application, arranged chronologically, by date of filing, appear at Appendix I, annexed hereto. Those applicants will hereafter be referred to by the name shown in parenthesis in Appendix I.

3/ Roadway's status and application were somewhat different in that it already operated in both the Southeast and Southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.

receivers and shippers, who gave evidence in support of one or more of the applications. The applications were opposed by sixty-six protestants six of whom subsequently withdrew their opposition. Evidence in support of forty-eight protestants was offered by sixty-two witnesses.

The examiners' report and recommended order, although finding each of the applicants "capable of performing the operation proposed", recommended that the application be denied on the ground that the applicants "had failed to establish that the present or future public convenience and necessity require[d] the operations proposed."

Eight of the applicants and some forty-one shippers, filed exceptions to the examiner's report.[4/] Inter alia, they collectively excepted to the organization and evaluation of the evidence by commodity to the substantial exclusion of the requirements of the territories and points involved in their general commodities application. Replies to those exceptions were filed and the matter came under consideration by the Commission, Division 1.

In its decision, the Commission found that the examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis'."

4/ Neither Roadway nor Floyd & Beasley filed exceptions. As to Roadway, the denial by the examiners became the order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. See notice of March 24, 1970. The exceptions of the other applicants nominally embraced Floyd & Beasley, which had the effect of staying the finality of the examiners' report as to it. However, Floyd & Beasley's application was denied. Herrin at 114 M.C.C. 612.

Herrin 114 M.C.C. at 599 at 591. [5]

After an extensive analysis and comparison of the evidence in support of and in opposition to the applications, the Commission concluded that the applications of Red Ball, Johnson and Bowman should be granted. Herrin, 114 M.C.C. at 599, 612-614. [6] It found, (id. at 599):

> The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

The Commission then summarized the reasons for its ultimate finding, Herrin 114 M.C.C. at 599-600:

> Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East, and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the avaliable motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting

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5/ The restatement of the supporting evidence, organized geographically appears at Appendix E, Herrin.

6/ None of the unsuccessful applicants is a plaintiff and there is of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, fn. 14, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customers' complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

Petitions for reconsideration and other pleadings were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September, 1972, the Commission, Division 1, Acting as an Appellate Division, denied or rejected all the petitions, except the one filed by Jones. At this point, the proceeding except as to Jones became administratively final. Petitions seeking a declaration by the Commission that the proceeding involved an issue of General Transportation Importance were denied by order dated October 6, 1972. 7/

The Complaint was filed in the Court on October 4, 1972, by sixteen plaintiffs. Later, three others were given leave to intervene as plaintiffs. All plaintiffs, except one, Arkansas-Best Freight System, Inc., (A-BF), were protestants to one or more of the applications which were granted. On November 7, 1972,

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7/ At the time this action was filed, the application of Jones Truck Lines, Inc., in Docket No. MC-111231 (Sub-No. 67) had not yet become administratively final. Jones' application was re-opened for reconsideration on the present record by order of the Commission, entered September 1, 1972. On reconsideration the application was granted in part and denied in part. Jones Truck Lines, Inc., Extension--Atlanta, Ga., 114 M.C.C. 586 (decided December 6, 1972). The Jones application became administratively final on May 29, 1973, when the Commission denied petitions for reconsideration of its December 6, 1972, decision. Plaintiffs thereupon filed a petition for leave to file a supplemental complaint in this action to include allegations of error by the Commission in authorizing a grant of authority to Jones. This Court denied that motion, with prejudice, on July 24, 1973.

Judge John E. Miller entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity in Herrin until the completion of judicial review proceedings before the three-judge court.

CONCLUSIONS OF LAW

The Commission's decision herein was issued under Section 207(a) of the Interstate Commerce Act, 49 U.S.C. §307(a), which provides as here pertinent:

> Subject to section 210, a certificate shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: * * *

The limited scope of review of decisions of the Commission is well settled (see, e.g., Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966); Universal Camera Corp. v. Labor Board, 340 U.S. 474, 488 (1951); United States v. Pierce Auto Freight Lines, 327 U.S. 658, 663 (1926)), and has been recognized by the Courts in this District on a number of occasions. See Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257, 264 (W.D. Ark. 1966); Reddish v. United States, 188 F. Supp. 160 (W.D. Ark. 1960) affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 178 F. Supp. 771, 773-774 (W.D. Ark. 1959). In Patterson v. United States, Judge Miller reviewed those principles at length (178 F. Supp. at 773-774):

The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. In United States v. Pierce Auto Freight Lines, Inc., 1946, 327 U.S. 515, at page 535, 66 S.Ct. 687, at page 698, 90 L.Ed. 821, the Supreme Court said:

> "We think the court misconceived not only the effects of the Commission's action in these cases but also its own function. It is not true, as the opinion stated, that '*** the courts must in a litigated case, be the arbiters of the paramount public interest'. This is rather the business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law".

He continued:

> The weight to be given by the Court to an administrative finding is well established. In Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S.Ct. 108, 111, 56 L.Ed. 208, the Supreme Court observed that it would "not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling." In Georgia Public Service Commission v. United States, 283 U.S. 765, 775, 51 S.Ct. 619, 623, 75 L.Ed. 1397, the Court said:
>
> > "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the considerations of its conclusions with those reached in similar cases".

In a recent case arising in this circuit, involving a similar order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D.C. D. Minn. 1959, 169 F. Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S.Ct. 140:

"As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S.Ct. 687, 90 L.Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S.Ct. 589, 87 L.Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D.C. 158 F. Supp. 246; Minneapolis & St. Louis Railway Co. v. United States, D.C. 165 F. Supp. 893."

Judge Miller concluded:

The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502.

Thus the principal issue in this case is whether the Commission acted within its discretion in concluding that the proposed service, to the extent granted, was required by the present or future public convenience and necessity. For the reasons hereafter stated, we conclude that the decision of the Commission was well within its discretion and should be sustained.

It would serve no useful purpose to repeat the testimony of each of the more than eight hundred and twenty-four supporting witnesses from the Southwest, Middle Atlantic, New England and Midwest States who testified on behalf of the

applicants.[8/] Their criticism of the performance--or nonperformance--of services by existing carriers is summarized by the Commission, in detail, in its decision (Herrin, Appendix E). It is sufficient to note that there is ample evidence of record showing a need for additional single line service.

Inter alia, the public witnesses testified to the following types of deficiencies in getting goods to market:

(1) The major complaint of the supporting shippers concerned transit time. About 650 shippers testified to this inadequacy and more than 200 introduced transit times studies demonstrating the undependable service.

8/ The testimony of witnesses who supported only the Roadway application was not considered at all. The testimony of those who supported Floyd and Beasley, alone, was considered, although not specifically discussed by the Commission, nor included within the 824 witnesses listed in Appendix E, Herrin, 114 M.C.C. at 591-92. The breakdown, by Region and States, of the number of witnesses who testified is as follows, id. at 592:

Southwest:	Arkansas	84	Southeast:	Alabama	84
	Colorado	6		Florida	15
	Louisiana	84		Georgia	114
	New Mexico	1		Kentucky	1
	Oklahoma	32		Mississippi	54
	Texas	375		N. Carolina	25
				S. Carolina	25
Midwest:	Kansas	15		Tennessee	17
	Missouri	27		Virginia	5

Middle Atlantic and New England:

Connecticut	4
Delaware	1
Maryland	3
Massachusetts	8
New Hampshire	1
New Jersey	9
New York	5
Pennsylvania	9
Rhode Island	4

Herrin, 114 M.C.C. at 596.

(2) About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic--particularly small shipments. 114 M.C.C. at 596-97.

(3) Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight. 114 M.C.C. at 597.

(4) Interline problems (which would be reduced by the single line grants authorized herein) were the subject of complaints from 110 shippers. About 200 witnesses described loss, damage, tracing and misrouting incidents, much of which occurred in interline service. 114 M.C.C. at 597.

(5) In addition to predictable adverse effects that inadequate service had upon the shippers--i.e.: loss of discounts or profits--80 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 597-98.

Those facts speak for themselves and, we find, they meet the test of substantial evidence, as that term is used in the Administrative Procedure Act, 5 U.S.C. 706(2)(E), of a need for additional service. We turn now to plaintiffs' argument that the Commission did not apply appropriate standards to the evidence of record.

We preface this discussion by observing that the issues before the Commission were varied and complex and required a de novo application of the Commission's expert

judgment, experience and knowledge of transportation matters. The issues before the Court are narrower. It is not the function of the Court to weigh the evidence anew or substitute its judgment in place of the Commission. "It is the exclusive province of the Commission to make findings of fact, to draw legitimate inferences therefrom, and to evaluate and determine the weight to be given conflicting evidence." Braswell Motor Freight Lines, Inc. v. United States, supra, 275 F. Supp. at 102. The pervasive feature of plaintiffs' dissatisfaction with the Commission's decision is their disagreement with the evaluation and weight given the evidence.

For example, plaintiffs contend that the Commission applied an improper standard in evaluating the evidence and making evidentiary findings. They call this improper standard a "Monday-Tuesday" rule (i.e., one rule for one party and a different rule for another), which they say was employed by the Commission for the benefit of the successful applicants and to the detriment of plaintiffs. But plaintiffs, in leveling their "Monday-Tuesday" charge at the Commission's evaluation of transit times studies, cite no rule of general application which was denied to them.

Plaintiffs direct their charge primarily at the Commission's evaluation of the evidence concerning transit time studies. "Transit time" refers to the amount of time required to move the goods from origin to destination. Its importance to shippers is obvious, and often has a great bearing on the issue of whether service is in fact adequate to meet their needs. Here transit time studies were introduced both by the applicants and their supporting shippers and by the plaintiffs.

The Commission gave careful consideration to those studies and measured them in comparison to each other. In regard to the transit times studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 596:

> The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving.

In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications. Herrin, 114 M.C.C. at 599.

In essence, the Commission found that the transit times studies of the 14 protestants generally relate to short periods of time and were made when protestants were confronted with the possibility of additional competition. Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, this Court concludes that the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419; Braswell Motor Freight Lines, Inc. v. United States, 100 M.C.C. 482, sustained sub nom. Dixie Highway Express,

Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).[9/]

Plaintiffs' further charge that the Commission "ignored" their studies is plainly without merit, since such studies were explicitly discussed by the Commission (Herrin, 114 M.C.C. at 599). In any event, it is well settled that the failure to discuss specific items of evidence is not tantamount to "ignoring" that evidence. Columbia Transportation Co. v. United States, 167 F. Supp. 1, 15 (E.D. Mich. 1958).

Moreover, the transit times studies was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. Among other inadequacies, the Commission--focusing on the problems of small shipments--found that many of the shippers were confronted with interline difficulties, carrier restrictions or embargoes which limit the service available.[10/] These findings are supported by substantial evidence, and afford additional support for the grants of authority here authorized.[11/]

9/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also initially rejected by that Court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

10/ Herrin, 114 M.C.C. at 600.

11/ Plaintiffs also assert that the Commission erred in granting leave to intervene to 41 supporting shippers subsequent to the examiners' report without awaiting plaintiffs' replies. But Rule 72(d) of the Commission's General Rules of Practice, 49 C.F.R. 1100.72, expressly provides:

> In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

And, in any event, plaintiffs have failed to demonstrate how they suffered any harm through the intervention of the supporting shippers, all of whom had testified earlier at the hearings.

Plaintiffs' contention that the Commission erred in refusing to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers is without merit, since the decision reveals that the Commission did consider these matters. The Commission not only made frequent text and footnote references to those changes,[12/] and specifically referred to a request made by certain protestants that it take official notice of those changes,[13/] it also distinctly said (Herrin, 114 M.C.C. at 576) that it took official notice of those changes which took place since the close of the hearings, including changes affecting carriers not parties to the proceeding. Moreover, the Commission demonstrated its consideration of the changes by limiting the quantum of motor carrier service it authorized to three of the remaining nine applicants in the proceeding. Nothing more was required.

Plaintiffs further complain of the fact that, as a result of the Commission's decision, they will be faced with additional competition. But the Commission could reasonably conclude that the additional competition would be in the public intrest, even though as a result plaintiffs may lose some traffic to their competitors. United States v. Dixie Highway Express, Inc., 389 U.S. 409, 411-12 (1967); Carolina Freight Carrier Corp. v. United States, 297 F. Supp 818, 852 (W.D. N.C. 1969); Atlanta-New Orleans Motor Freight

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12/ Eg., Herrin, 114 M.C.C. at 574, 575, 578, 585, 586, 600, 611, 627, 631, 635, 759, 762, 764, 771, 772, 773, 77, 779, 782, 784, 792.

13/ Id., at 631.

Co. v. United States, 197 F. Supp. 364 (N.D. Ga. 1961); Arlington, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd per curiam, 340 U.S. 802. As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra, 197 F. Supp. at 370:

> this, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D. Va., 96 F. Supp. 756, 761 affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 94 L.Ed. 590, remarked "Competition among public carriers may be in the public interest and the carrier first in the business has no immunity against future competition [citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity, may be served by the issuance of a certificate to a new competitor."

Plaintiffs also assert error in the Commission's denial of A-BF's petition to reconsider and reopen the Bowman applications. But it is a well settled principle that petitions for reconsideration or reopening are addressed to the sound discretion of the Commission and that the denial of those petitions will be reversed only for clear abuse of discretion. United States v. Pierce Auto Freight Lines, supra; Interstate Commerce Commission v. Jersey City, 322 U.S. 503 (1943). In the latter case Mr. Justice Jackson, speaking for the Court observed:

> [it] has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that the discretion to be invoked was that of the body making theorder, and not that of a reviewing body.

Summary denial of such a petition is appropriate and further findings and conclusions are unnecessary if it is clear that the Commission gave due consideration to the petition. Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp 894 (D. Col. 1963). Here there is no showing that the Commission abused its discretion in denying A-BF's petition.

The petition to re-open were directed solely to the Bowman service to Montgomery, Alabama. In its decision, the Commission had found that despite Bowman's manifest intent to utilize Montgomery, Alabama, as a gateway, and the showing of public need for that service, Bowman's application was defective in giving notice of such intent. Therefore, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. A-BF and several other carriers who were not parties to the Bowman proceeding[14/] thereupon filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. All such petitions were denied or rejected, but only A-BF, of those who filed such petitions, is a party to this action

Since A-BF holds no authority to serve Montgomery, it is difficult to see how it could have been prejudiced

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14/ A-BF had originally filed a protest to the Bowman application, but voluntarily withdrew its protest near the end of the oral hearing. (Tr. 19, 809, June 15, 1967).

by the Montgomery grant, and the Commission's denial of its petition was clearly within its discretion. In fact, A-BF's petition reveals that it was not really concerned with the Montgomery grant, but its petition to reopen was bottomed on the contention that A-BF could not have known until republication that Bowman would be able to tack[15/] the rights granted herein to certain operating authorities which Bowman obtained by purchase from Alabama Highway Express in October, 1968.[16/] This contention in turn is based on the theory that Bowman's application, as originally published in the Federal Register in 1965, stating that applicant intends to tack the proposed routes with authority previously granted, amounted in effect to a restriction against tacking with after-acquired rights. But, in view of the Commission's long-established policy not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown (Fox-Smythe Transportation Co. Extension--Oklahoma, 106 M.C.C. 1, 18 (1967), this court is persuaded that the language of the Bowman application cannot reasonably be construed to be a restriction against tacking with after-acquired authorities. Since reasonable notice of the intention to tack with all authorities was given by the original Federal Register publications, A-BF had notice from the beginning of that intention and no need for reopening was shown. Compare Federal Crop Ins. Co. v. Merrill, 332 U.S. 380, 385 (1949); Yakus v. United States, 321 U.S. 414, 425 (1944).

15/"Tacking" means a carrier's ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

16/Notice of the filing of this application in Docket No. MC-F-9927 Bowman Transportation, Inc.--Purchase (Portion)--Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. 32 F.R. 15141. There was a republication, showing additional authority be granted, in the Federal Register on June 19, 1968. 33 FR 9051.

Finally, there is no merit to plaintiffs' attack upon the Commission's "re-statement" of the facts found by the examiners. The agency's right to re-state the evidence in form reflecting its pattern of analysis is confirmed by Section 8(a) of the Administrative Procedure Act, 5 U.S.C. §557(b), which provides, as pertinent:

> On appeal from a review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

Plaintiffs' claim that the certain language of Rule 96 of the Commission's Rules of Practice, 49 C.F.R. §1100.96, is a "limitation" on the Commission's powers, within the meaning of the Administrative Procedure Act is of no validity. The pertinent part of Rule 96 provides:

> (a) Generally. Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relief upon to support the exception and a corrected statement must be incorporated.

To begin with, it is well established that the "clearly erroneous" rule of the Federal Rules of Civil Procedure, 52(a), applicable to courts is not applicable to an agency's review of examiners' reports. Universal Camera Corp. v. N.L.R.B., supra; F.C.C. v. Allentown Broadcasting Corp., 349 U.S. 358 (1954). Any departure from that practice, statutorily, let alone by rule, must be explicit. F.C.C. v. Allentown Broadcasting Corp., supra, 349 U.S. at 364.

Rule 96(a) does not on its face limit the Commission's powers on review and cannot be said to have the degree of "explicitness" required for such limitation. Moreover, the rule which follows in the General Rules of Practice, Rule 97, concerning the "effect of exceptions or absence thereof" establishes that Rule 96 does not relegate the Commission to the role of sustaining those findings in the absence of objection.[17/] Thus Rule 96 is a procedural rule designed to facilitate the development of relevant information for the Commission's use in reviewing initial decisions. As its companion rule (Rule 97) vividly demonstrates, Rule 96 was not intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion. See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532 (1970).

In sum, it is the conclusion of the Court that the decision of the Commission is supported by substantial evidence, and its procedural handling of the case was well written in its discretion.

17/ Rule 97 (49 CFR 1100.97) provides:

> Rule 97 -- Effect of exceptions or absence thereof.
>
> (a) Upon report and recommended order. The filing of exceptions to a recommended order operates to stay the effectiveness of the order and thereafter decision by the Commission will be made in due course. If no exception is filed to the recommended order and the Commission does not stay it, the recommended order becomes the order of the Commission upon expiration of the period of filing exceptions provided in Rule 96(b), or any postponement of such period, or postponement of the effective date of such order, and a notice stating that the recommended order has, giving the date, become the order of the Commission will be mailed to the parties by the Commission.
>
> (b) Upon proposed report. A proposed report will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertained error the officer's statement of the issues and of the facts ordinarily will be taken by the Commission as the basis of its decision. (emphasis supplied)

Accordingly, the orders of the Commission are affirmed and an order will be entered dismissing the plaintiffs' complaint and dissolving the temporary restraining order previously issued.

United States Circuit Judge

United States District Judge

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this, the 10th day of August, 1973 I served true copies of the foregoing Joint Proposed Findings of Fact and Conclusions of Law on counsel for all parties of record by first-class, airmail, postage prepaid.

SEYMOUR GLANZER
Attorney

APPENDIX I

CHRONOLOGICAL SEQUENCE OF FILING OF THE APPLICATIONS HEARD ON THE CONSOLIDATED RECORD HEREIN

1. December 7, 1964
Roadway Express, Inc. (Roadway)
No. MC-2202 (Sub-No. 273)

2. March 23, 1965
Johnson Motor Lines, Inc. (Johnson)
No. MC-106401 (Sub-No. 16)

3. May 17, 1965
Red Ball Motor Freight, Inc. (Red Ball)
No. MC-2229 (Sub-No. 132)

4. May 18, 1965
Floyd & Beasley Transfer Company, Inc. (Floyd & Beasley)
No. MC-18088 (Sub-No. 36)

5. May 28, 1965
Deaton, Inc. (Deaton)
No. MC-11207 (Sub-No. 203)

6. June 14, 1965
Jones Truck Lines, Inc. (Jones)
No. MC-111231 (Sub-No. 67)

7. June 16, 1965
Strickland Transportation Co., Inc. (Strickland)
No. MC-59680 (Sub-No. 147)

8. June 18, 1965
Herrin Transportation Company (Herrin)
No. MC-1124 (Sub-No. 206)

9. July 12, 1965
Bowman (Bowman)
No. MC-94201 (Sub-No. 56)

10. July 30, 1965
Baggett Transportation Company (Baggett)
No. MC-76177 (Sub-No. 304)

APPENDIX II

NUMBER OF PUBLIC WITNESSES
WHO TESTIFIED IN SUPPORT
OF APPLICATIONS*

Carrier	Witness Support
Herrin	116
Roadway	123
Red Ball	171
Deaton	58
Floyd & Beasley	41
Strickland	134
Baggett	52
Bowman	363
Johnson	256
Jones	222

* Ex. Rept. 4

APPENDIX IV

DISPOSITION OF THE TEN APPLICATIONS
NOT SELECTED FOR CONSOLIDATION

APPLICATION	DISPOSITION
Braswell (Sub-No. 17) Red Ball (Sub-No. 131)	Granted 112 M.C.C. 558 (1970)
Deaton (Sub-No. 232) Cole/Dixie (Sub-No. 96)	Denied 106 M.C.C. 792 (1968)
Campbell (Sub-No. 106)	Granted with conditions 108 M.C.C. 80 (1968)
Mercury Freight (Sub-No. 11) Mercury Freight (Sub-No. 12)	Granted 1966 and 1968 (Not Printed)
Thurston (Sub-No. 54)	Granted 105 M.C.C. 586 (1967)
Gordons (Sub-No. 94) Dixie Ohio (Sub-No. 62)	Dismissed by Applicants (1966)

APPENDIX III

PROFILE OF PLAINTIFFS AND THE APPLICATIONS THEY OPPOSED [1]

Plaintiffs [2]	SUCCESSFUL APPLICANTS			OTHER APPLICANTS						
	Red Bell MC-2779 (Sub-No. 132)	Bowman MC-94201 (Sub-No. 56)	Johnson MC-106401 (Sub-No. 18)	Herrin [3] MC-1124 (Sub-No. 206)	Beaton MC-11207 (Sub-No. 233)	Strickland MC-59680 (Sub-No. 147)	Baggett MC-76177 (Sub-No. 365)	Jones MC-111231 (Sub-No. 67)	Floyd & Beasley MC-13086 (Sub-No. 36)	[illegible] MC-[illegible]
Arkansas-Best Freight System, Inc. (A-BF)		[4]								
Mercury Motors, Incorporated (Mercury Motors)		X								
Alamo Express, Inc. (Alamo)		X	X		X					X
Braswell Motor Freight Line, Inc. (Braswell)	X	X	X		X					
Campbell Sixty-Six Express, Inc. (Campbell) [5]	X	[6]	X	X	X	X	X	X	X	X
Central Freight Lines, Inc. (Central)		X	X	X	X	X	X	X	X	X
ET & WNC Transportation Company (ET & WNC)		X			X		X		X	
Eagle Motor Lines, Inc. (Eagle)		X					X		X	
Gordons Transports, Inc. (Gordons)	X	X	X				X		X	
Holloway Motor Express, Inc. (Holloway)		X		X	X	X		X	X	X
Mercury Freight Lines, Inc. (Mercury Freight)	X	X	X		X		X		X	
Red Arrow Freight Lines, Inc. (Red Arrow)		X		X	X	X	X	X	X	X
Red Line Transfer & Storage Company, Inc. (Red Line)	X	X			X		X		X	
T.I.M.E.-DC, Inc. (T.I.M.E.)	X	X	X	X	X	X	X	X	X	X
Transacon Line, (Transacon)	X	X	X	X	X	X	X	X	X	X
Yellow Freight Systems, Inc. (Yellow) [7]	X	X	X	X	X	X	X	X	X	X
Watson Express, Inc. } Roadway [8]		X			X		X		X	
Roadway Express, Inc. of Mississippi }	X	X	X	X	X	X	X	X	X	X
Jack Cole-Dixie Highway Company (Jack Cole-Dixie)	X	X	X	X	X	X	X	X	X	X

[1] The primary source for the profile is Herrin, Appendix G, 114 M.C.C. at 757-796

[2] Milan Trucking Company was substituted for Herrin. Herrin 114 M.C.C. 571

[3] In some instances, the protests involved only a portion of the application opposed.

[4] AB-F filed a protest to Bowman's application which it withdrew before the close of the oral hearing. No. 19,809. Its petition for leave to intervene, etc., filed March 27, 1972 was denied by order of Division 1, Acting as an Appellate Division, September 1, 1972.

[5] The operations of United Motor Freight Terminal, Inc. (United) were merged into Campbell. Herrin 114 M.C.C. at 777. United's protests are treated as Campbell's whether or not the two are duplicative.

[6] Campbell withdrew its protest to Bowman subsequent to the hearing. Herrin 114 M.C.C. at 776.

[7] Watson-Wilson Transportation System, Inc. (Watson-Wilson) was merged into Yellow. Herrin 114 M.C.C. at 794. Yellow's interest is derived from Watson-Wilson.

[8] Roadway obtained control of West Brothers, Inc. (West). Herrin 114 M.C.C. at 782. West's protests (except its protest of Roadway) are treated as Roadway's whether or not the two are duplicative.

APPENDIX G

Proposed Opinion, Findings of Fact and Conclusions of Law submitted by defendants, Red Ball Motor Freight, Inc., Johnson Motor Lines, Inc. and Lorch-Westway Corporation, et al, filed August 13, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

* * * * *

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,	:	
Plaintiffs,	:	
V.	:	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	:	
Defendants,	:	
and	:	Civil Action No. FS-72-C-65
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORPORATION, ET AL.,	:	
Intervening Defendants.	:	

* * * * *

PROPOSED OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW OF DEFENDANTS RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

In this action commenced October 4, 1972, 18 plaintiffs[1/] seek to set aside and annul orders of the Interstate Commerce Commission (I.C.C.) awarding certificates of public convenience and necessity to three motor carriers, Red Ball Motor Freight, Inc. of Dallas, Tex., Johnson Motor Lines, Inc. of Charlotte, N.C., and Bowman Transportation, Inc. of Birmingham, Ala. The challenged orders were entered by the Commission on December 30, 1971, and September 6, 1972, in a proceeding styled Herrin Transportation Company Extension - Atlanta, Ga., 114 M.C.C. 571 (1971).

1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc., and Jack Cole/Dixie Highway Company. Roadway and Cole/Dixie were permitted to intervene as plaintiffs after the filing of the complaint.

This court has jurisdiction of the subject matter and of the parties under 49 U.S.C.A. §§ 17(9), 305(g); 28 U.S.C.A. §§ 1336, 1398, 2321, 2325, and 2284.

Plaintiffs are motor carriers which opposed one or more of the successful applications before the Commission.[2/] The named defendants are the United States of America and the Interstate Commerce Commission. The three successful applicants, together with 41 shippers (Lorch-Westway Corp., et al.) supporting the Johnson application before the agency, were authorized by the court to intervene as defendants.

On November 7, 1972, following oral argument, Judge John E. Miller entered an order restraining the Commission from implementing the assailed orders pending a hearing and determination of the merits of the action. Arkansas-Best Freight System, Inc., et al. v. United States, et al., 350 F. Supp. 539. The case was submitted for determination by the three-judge court on July 24, 1972, upon the pleadings, the agency record, and the extensive briefs of the parties.[3/]

The Agency Proceeding

The proceeding before the Commission was commenced by the filing of a certificate application by Roadway Express, Inc., on December 7, 1964. Thereafter, during the spring and summer of 1965, 19 other motor carriers filed applications seeking certificates

---

2/ Venue plaintiff Arkansas-Best Freight System did not participate in the agency proceeding in opposition to these applications. It participates in this action solely to challenge the Commission's denial of its post decision request to intervene in and rehear the Bowman application. Venue plaintiff Mercury Motors opposed only the Bowman application.

3/ On July 24, 1972, the court, following oral argument, also denied plaintiffs' motion, under F.R.Civ. P. 15(d), to file a supplemental complaint challenging the Commission's final order awarding a certificate in Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586 (1972).

authorizing general commodity operations between points in the southwest and southwest. Pursuant to the Commission's rules of practice, notice of the applications was published in the Federal Register and thereafter they were protested by multiple opposing carriers. As a result of a prehearing conference held on September 9, 19[illegible], ten of the applications were consolidated for hearing and ten were processed separately. The ten applications heard on the consolidated record are identified below; the Commission's disposition of the other ten is noted in the margin:[4/]

Applicant	I.C.C. Docket No.	Date Filed
Roadway Express, Inc.	MC-220[illegible] (Sub-No. 27[illegible])	12/[illegible]
Johnson Motor Lines, Inc.	MC-106401 (Sub-No. 1[illegible])	9/23/65
Red Ball Motor Freight, Inc.	MC-22229 (Sub-No. 1[illegible])	5/17/65
Floyd & Beasley Transfer Company, Inc.	MC-1[illegible]088 (Sub-No. [illegible])	5/1[illegible]/65
Deaton, Inc.	MC-11207 (Sub-No. 2[illegible])	5/25/65
Jones Truck Lines, Inc.	MC-111231 (Sub-No. [illegible])	6/14/65
Strickland Transportation Co., Inc.	MC-[illegible] (Sub-No. 147)	6/1[illegible]/65
Herrin Transportation Company, Inc.	MC-1124 (Sub-No. 20[illegible])	6/18/65
Bowman Transportation, Inc.	MC-94201 (Sub-No. 5[illegible])	7/12/65
Baggett Transportation Company	MC-76177 (Sub-No. 204)	[illegible]/65

The territorial scope of the consolidated applications varied in accordance with the existing authorities of the ten applicants and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories by area. Four southwestern based applicants, Red Ball, Herrin, Strickland, and Jones, sought to extend their operations to the southeast. Five southeastern-domiciled applicants, Johnson, Bowman, Floyd & Beasley, Deaton, and Baggett sought to obtain authority to the southwest.[5/]

4/ Four of the separately processed applications were granted in Braswell Motor Freight Lines, Inc., Extension - Between Houston, Tex., and New Orleans, La. 112 M.C.C. 558 (1970); Campbell Sixty-Six Express, Inc., Extension - Atlanta, 108 M.C.C. 80 (19[illegible]); and Thurston Motor Lines, Inc. - Charlotte Gateway, 105 M.C.C. 5[illegible] (19[illegible]). The applications of Merrill, Freight were granted in 1966 and 1967 in unreported decisions. The applications of Cole/Dixie and Deaton were denied in West Brothers, Inc., Extension - Baton Rouge, La., 19[illegible] (19[illegible]). The applications of Gordons and Dixie [illegible] were [illegible] in 1966.

5/ Roadway's status and application were somewhat different in that it already operated in both the southeast and southwest, but sought to extend its operations from Montgomery, Ala., to Baton Rouge, La., via Pensacola, Fla., and New Orleans, La.

The Commission assigned two hearing examiners (now administrative law judges) to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about 16 months extending from March 1966 to August 1967. Nine-hundred and fifty witnesses testified on behalf of the applicants. Of that number, 933 public witnesses, shippers, and receivers gave evidence in support of one or more of the applications. Evidence in support of 48 active protestants was offered by 62 witnesses.6/

Simultaneous post-hearing briefs, including abstracts of the evidence, were filed by the parties. On November 19, 1969, the examiners served their report and recommended order finding all of the applicants "capable of performing the operations proposed," but recommending denial of all applications. Exceptions to the examiners' report were filed by eight applicants, including Johnson, Bowman, and Red Ball, and by 41 shippers, Lorch-Westway, et al., who were permitted to intervene in support of the Johnson application. Replies to those exceptions were filed by the protestants. On or about August 1, 1970, the case was submitted for the decision of the Commission, Division 1.

In a 225-page unanimous decision and order entered December 30, 1971, the Commission, Division 1, concluded that the applications of Red Ball, Johnson, and Bowman should be granted. It found:

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."
> 114 M.C.C. at 599.

6/ The agency record, described by the Commission as perhaps the most extensive ever developed in a case of this kind, consists of 1,989 exhibits, many several hundred pages in length, and a hearing transcript numbering 23,423 pages.

It then summarized the reasons for its ultimate finding:

> "Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicant's proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings." 114 M.C.C. at 599-600.

Petitions for reconsideration and other pleadings seeking changes in the December 30, 1971, decision were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September 6, 1972, the Commission's Division 1, acting as an Appellate Division, denied or rejected all petitions relevant to the Johnson, Bowman, and Mel Bell cases, and these three certificate awards became administratively final and ripe for judicial review.

On September 21, 1972, protestants then filed petitions under I.C.C. General Practice Rule 101(a)(4) requesting the Commission to rule and announce that the proceeding involved an issue of general transportation importance. These petitions, somewhat similar in nature to a litigant's request for rehearing en banc, were denied by the entire Commission by a vote of 6 - 3.

Issues Before This Court

We read plaintiffs' pleadings to contain four broad challenges to the Commission's decision:

(1) Whether the Commission properly decided the case differently than recommended by the hearing examiners.

(2) Whether the Commission's decision granting the certificates is supported by substantial evidence.

(3) Whether the Commission acted arbitrarily and capriciously in the weight it accorded certain evidence.

(4) Whether plaintiffs, or any of them, were denied due process.

pe of Judicial Review

The Commission decision is before the court under well-established principles of a limited scope of review. That decision will be sustained if it is within the agency's statutory powers and is based on appropriate findings which, in turn, are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 619-621 (1966);

Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 481 (1951); United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515, 535-536 (1946). In Consolo, supra, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." 383 U.S. at 620.

When the Commission's decision is supported by substantial evidence on the record, that decision must be affirmed even though this court might reach a different conclusion if it were hearing the case de novo as a civil proceeding. Thus, in Texas Mexican Ry. Co. v. United States, 250 F. Supp. 946 (S.D. Tex. 1966), a three-judge court review of an I.C.C. decision, the court stated this rule:

> "The conclusion of the Commission finds support in the record as a whole, even though we might justifiably have made a different choice had the matter been before us de novo; and, therefore, this Court may not set the order aside." 250 F. Supp. at 950.

This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (W.D. Ark. 1966); Reddish v. United States, 180 F. Supp. 180 (W.D. Ark. 1960), aff'd sub nom., Interstate Commerce Commission v. W. S. T. Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 173 F. Supp. 771 (W.D. Ark. 1959). In Patterson, Judge Miller held:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. [Citations omitted.]
>
> * * *
>
> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its actions.' [Citations omitted.]
>
> * * *

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."
> 178 F. Supp. at 773-774.

In defining substantial evidence in Superior Trucking Company, Inc. v. United States, 306 F. Supp. 872 (N.D. Ga. 1969), the court said:

> "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. . . . Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L. Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence *** must do more than create a suspicion of the existence of the fact to be established. *** [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S. Ct. 501, 505, 83 L.Ed. 660 (1939)."
> 306 F. Supp. at 875.

In Curtis, Inc. v. United States, 327 F. Supp. 291 (D. Col. 1971), the court explained what does not render evidence insubstantial:

> "A review of the extensive record in this case does indeed reveal that the Commission had before it substantial evidence upon which to predicate its actions. Plaintiff attempts to refute the findings of the Hearing Examiner (subsequently adopted by the Commission) witness by witness (and there were over 60 witnesses). However, in almost every instance these attempts amount to efforts to equate controverted or disputed evidence on behalf of the applicants before the Commission with insubstantial evidence. This cannot be done."
> 327 F. Supp. at 294. (Emphasis added.)

This limited scope of review is particularly appropriate when, as here, plaintiffs are attacking the exercise of the Commission's authority in the specific area of public convenience and necessity. The scope of the certificates which should be granted entails not only a weighing of the evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 478-480 (1942). Compare Andrew G. Nelson, Inc. v. United States, 355 U.S. 554,

578 (1938); United States v. Baker, 307 U.S. 143, 154 (1939). See also, Atlanta- New Orleans Freight Co. v. United States, 155 F. Supp. 68 (N.D. Ga. 1953), where the court made reference to the applicable standards in the following language:

> "In cases such as this 'the Commission, through the application of its expert judgment and experience in, and knowledge of, interstate transportation matters, is the final arbiter upon whether or not additional motor carrier service is required. Public transportation is not something that can belong to an applicant. It is established and determined by proof of conditions which exist in the territory to be served.' Wales v. United States, 103 F. Supp. 920, at page 933." 155 F. Supp. at 74.

Accord: Illinois Central R.R. Co. v. Norfolk & W. Ry. Co., 385 U.S. 57, 66 (1966); United States v. Pierce Auto Freight Lines, 327 U.S. 515, 535-536 (1946); Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945); United States v. Detroit & Cleveland Navigation Co., 326 U.S. 236, 241 (1945).

In short, there is a presumption that an administrative agency has properly performed its official duties in the absence of clear evidence to the contrary. Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968); Interstate Commerce Commission v. City of Jersey City, 322 U.S. 503, 512-513 (1944). The judicial function is exhausted when there is found to be a rational basis for the action taken by the agency. Mississippi Valley Barge Line Co. v. United States, 292 U.S. 282, 286-287 (1934).

Did the Commission Properly Decide the Case Differently Than Recommended by the Hearing Examiners?

In a report containing 38 pages of text and 275 pages of appendices, the hearing examiners concluded that all of the applications should be denied. In its decision of December 30, 1971, the Commission considered "[T]he evidence, the recommendations of the hearing examiners, and the pleadings" [114 M.C.C. at 575] and stated that "[o]ur conclusions differ in three of the embraced proceedings from those recommended by the

examiners." 114 M.C.C. at 574. As this court has stated, the Commission has the right, indeed duty, to make its own decision and in so doing to be free to accept or reject the recommendations of its examiners.

The hearing before the examiners was conducted as a contested proceeding on the record pursuant to 49 U.S.C. §§ 305(c), (d), and (e). Minneapolis & St. L. Ry. v. United States, 361 U.S. 173, 192 (1959). The report of the examiners was solely an initial decision pursuant to 5 U.S.C. §§ 556 and 557. Under this statute, "[t]he Commission is not bound by the findings of the hearing officers and is free to reach conclusions upon the evidence contrary to those of its examiners." Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 554.

The relationship between the examiners and the Commission is not the same relationship which exists between the Commission and this court. The Commission exercises all of the authority conferred upon it by statute. It can properly substitute its own judgment for the judgment of the examiner and itself reach an initial decision. ". . . On appeal from or review of the initial decision [of the hearing examiner], the agency has all the powers which it would have in making the initial decision. . . ." 5 U.S.C § 557(b). "The Commission is not bound by the examiner's conclusions. Rather, the Commission is free to make its own independent determinations." Frozen Food Express, Inc. v. United States, 301 F. Supp. 1322, 1324 (N.D. Tex. 1969); see Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 544.

In Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 493 (1951), the Supreme Court established the rule that the examiner's decision is only part of the whole record which the court must review to determine if there is substantial evidence to support the Commission's decision. This holding was further explained in Federal Communications Commission v. Allentown Broadcasting Corp., 349 U.S. 358 (1955).

In that case the Supreme Court reversed a Court of Appeals decision which held that an examiner's findings could not be overruled by the agency unless there was a "'very substantial preponderance in the testimony as recorded.'" 349 U.S. at 360. The Supreme Court held that the F.C.C. could not be limited to the "clearly erroneous" rule embodied in Rule 52(a), Fed. R. Civ. P., when reversing decisions of the hearing examiner. The statute gives to the Commission, not to the examiner, the power to rule on the facts and the law. Therefore, the relevant inquiry for the courts is whether there is substantial evidence on the record as a whole to support the Commission's decision. 349 U.S. at 364-365.

In Lorain Journal Co. v. Federal Communications Commission, 351 F. 2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966), the petitioners complained that the F.C.C., in reversing the hearing examiner's findings, did not give sufficient weight to the examiner's decision. The court stated:

> "But their [examiners'] authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364, 75 S. Ct. 855, 99 L.Ed. 1147 (1955). The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance." 351 F. 2d at 828. (Emphasis added.)

Thus, the court held that it must sustain the Commission's decision if supported by substantial evidence, even though there was substantial evidence to support the examiner's decision. 351 F. 2d at 828.

Plaintiffs contend, however, that in this case the Commission was procedurally bound by the examiners' summary of the testimony of the public witnesses and their conclusions respecting that evidence because the exceptions filed by the applicants had failed to pinpoint defects in the examiners' summary. This contention is devoid of substance.

Appendix C of the examiners' report contained their summary of the testimony of the public witnesses. This summary was organized by the commodities shipped or received. The Commission did not adopt the examiners' Appendix C. Rather, it said:

> "The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis. We have accordingly restated the supporting evidence in appendix E to this report." 114 M.C.C. at 591.

Appendix E of the Commission's decision contained its own independent statement of the testimony of the public witnesses organized geographically by states. The testimony of 824 7/ witnesses was classified in Appendix E under five major headings: (1) Shipper location and commodities; (2) origins, destinations, volume, type, and frequency of traffic; (3) existing service utilized; (4) reasons for supporting applications; and (5) applications supported and remarks. This summary of evidence in Appendix E must then be read in conjunction with the Commission's discussion of that evidence at pages 591-598 of the report, under the heading "Supporting Evidence." It was by means of the Appendix E summary and the discussion at pages 591-598 that the Commission enters the "basic or essential findings" to support its ultimate conclusion that there is a public need for additional motor carrier service.

7/ "Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest, [footnote: "Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas."]; 340 shippers in the Southeast, 44, collectively, in the Middle Atlantic and New England States; and 42 in the Midwest." 114 M.C.C. at 592.

In view of the large number of public witnesses and the high value of their evidence, we do not quarrel with the agency's organization of this material. Nor do we accept plaintiffs' contention that the Commission was prohibited by applicants' pleadings from doing what it did.

The exceptions to the examiners' report filed by applicants and Lunch-Westway, together with the replies thereto filed by the protestants-plaintiffs, are summarized in Appendix D to the Commission's report. 114 M.C.C. at 624-639. These pleadings are also discussed in the text of the decision. 114 M.C.C. at 574-579. These discussions by the Commission together with the court's independent perusal of the pleadings are persuasive that the applicants' exceptions and the replies thereto raised substantial issues respecting the accuracy and completeness of the examiners' summary of the public witness testimony and fully justified the Commission's restatement of it.

Is the Commission's Decision Supported by Substantial Evidence?

The Commission's decision granting the applications of Johnson, Bowman, and Red Ball is supported by substantial evidence. We recognize the deference accorded to Commission determinations of public convenience and necessity and explained our limited function in reviewing this decision. It is with these standards in mind that we here examine the Commission's findings and the evidence underlying them.

The Commission's approval of the three applications turned fundamentally upon three correlative findings. It found that the record as a whole showed widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the southwest and the southeast, eastern seaboard, and gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature. It also found that the available transportation service between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public. Finally, it found the evidence,

considered in its entirety, was convincing that the additional services of three of the applicants ". . . will serve a useful public purpose, responsive to a public demand and need." 114 M.C.C. at 599-602. These findings were premised on a number of interrelated subsidiary findings respecting public dissatisfaction with the existing transport system and the pressing public demand and need for the services proposed by the successful applicants.

The major problem facing the public witnesses was the excessive and erratic transit times experienced between pickup and delivery of their traffic. About 650 shippers testified to this inadequacy. More than 200 evidenced transit time studies demonstrating the undependable service.

About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic -- particularly small shipments. Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight.

Interline problems (which would be reduced by the single line grants authorized by the Commission) were the subject of complaints from 110 shippers. About 200 witnesses criticized loss, damage, tracing, and misrouting incidents, much of which occurred in interline service.

In addition to predictable adverse effects that inadequate service had upon the shippers -- i.e., loss of discounts or profits -- 60 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 596-598. The Commission therefore properly found that the supporting witnesses have shown a valid public need to additional motor carrier service. 114 M.C.C. at 600.

The Commission also found that the granting of all of the applications would be contrary to the public interest; that a compelling public demand and need exists for the services proposed by three applicants; and that the gains to be derived by the public from these three authorizations ". . . far outweigh any adverse effect . . . any protestant may experience." 114 M.C.C. at 601-602, 611. Plaintiffs challenge these

findings by reference to the examiners' findings that granting the ten applications would have a serious adverse effect upon the existing carrier service (Examiners Report, p. 20). But there is no valid comparison between the examiners' "impact" findings and those of the agency. The examiners lumped the effects on existing carriers of the granting of all ten applications in reaching their conclusion as to possible adverse effect, without making any analysis whatever of the impact, if any, of the granting of any individual application. The Commission, on the other hand, balanced the gains to the public against possible detriment to protestants from the granting of three applications. It found the scale to dip decidedly in favor of the public, notwithstanding the awards "will subject some of protestants' traffic to the possibility of diversion." 114 M.C.C. at 610-611.

Contrary to plaintiffs' view, the protection of existing carriers is not the overriding purpose of motor carrier regulation. Rather, the federal regulations attempt to develop, coordinate, and preserve a national transportation system adequate to meet the commercial needs of the country. (See "National Transportation Policy," 49 U.S.C. preceding § 1.) While protection of existing carriers is a consideration, that factor does not ipso facto bar the Commission from allowing new competition into the field. Petroleum Carriers Corporation v. United States, 258 F. Supp. 611, 615-616 (M.D. Fla. 1966).

The fact that plaintiffs will now have additional competitors is no reason to deny authority. As the Supreme Court stated in United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967):

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is

> of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v Drum, 368 US 370, 374, 7 L ed 2d 360, 363, 82 S Ct 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v Parker, 326 US 60, 70, 89 L ed 2051, 2062, 65 S Ct 1490 (1945); see Schaffer Transportation Co. v United States, 355 US 83, 90-91, 2 L Ed 2d 117, 122, 123, 78 S Ct 173 (1957)." 389 U.S. at 411-412.

In a further decision in Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. N.Y. 1968), the court, per curiam, said:

> "But criticism of such treatment of said franchises did not properly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. [Footnote omitted.] A sound discretion in the exercise of a highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision. . . . There are numerous and very complex and complicated problems which must be considered and weighed and balanced against each other and decided for a proper determination by this administrative agency as to the existence vel non of any public need or necessity for a franchise to serve public transportation needs and requirements." 287 F. Supp. at 474-475.

To be sure, the Commission found that some plaintiffs may be disadvantaged and may lose some traffic as a result of these awards. 114 M.C.C. at 610-611. But having found the existing services wholly inadequate for the public's needs, the Commission then reasonably concluded that the additional competition offered would be in the public interest. The courts have long recognized a discretion in the Commission to find that additional competition would serve the public convenience and necessity. Chesapeake & O. Ry. Co. v. United States, 283 U.S. 35, 43 (1931); Superior Trucking Co. v. United States, supra, 306 F. Supp. at

376-377; Carolina Freight Carriers Corp. v. United States, 237 F. Supp. 849, 852 (W.D. N.C. 1964); Atlanta-New Orleans Motor Freight Co. v. United States, 197 F. Supp. 364, 369-370 (N.D. Ga. 1961); Alexandria, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd, 340 U.S. 802 (1950); Lang Transp. Corporation v. United States, 75 F. Supp. 919, 931 (S.D. Cal. 1948); A. B. & C. Motor Transp. Co. v. United States, 69 F. Supp. 166, 169 (D. Mass. 1946); Davidson Transfer & Storage Co. v. United States, 42 F. Supp. 215, 219 (E.D. Pa. 1942), aff'd, 317 U.S. 587 (1942). As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra:

> "[T]his, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D.Va., 96 F.Supp. 756, 761, affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 95 L.Ed. 590, remarked:
>
> > 'Competition among public carriers may be in the public interest and the carrier first in business has no immunity against future competition. [Citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity may be served by the issuance of a certificate to a new competitor.'"
>
> 197 F. Supp. at 370.

Did the Commission Act Arbitrarily and Capriciously in the Weight It Accorded Evidence by Different Parties?

The issues before the Commission were varied and complex and required a de novo application of the Commission's expert judgment, experience, and knowledge of transportation matters. The issues before this court are narrower. It is not our function to weigh the evidence anew or substitute or judgment for that of the Commission. "[I]t is the exclusive province of the Commission to make findings of fact, to draw

legitimate inferences therefrom, and the weight to be given conflicting evidence. Braswell Motor Freight Lines, Inc. v. United States, 275 F. Supp. 98, 102 (W.D. Tex. 1967), aff'd, 389 U.S. 569 (1968), reh. den, 390 U.S. 975 (1968). The pervasive feature of plaintiffs' challenge to the Commission's decision is their disagreement with the evaluation and weight accorded evidence.

To lend color to these arguments plaintiffs first accuse the Commission of violating a so-called "Monday-Tuesday" principle stated in the concurring opinion of Judge Brown in Mary Carter Paint Co. v. Federal Trade Commission, 333 F. 2d 654, 660) (5th Cir. 1964), rev'd, Federal Trade Commission v. Mary Carter Paint Co., 382 U.S. 46 (1965). In their reply brief plaintiffs shifted the pivot of this challenge to accusations that the Commission acted arbitrarily and capriciously and therefore without a rational basis in evaluating and weighing the evidence. At the heart of these accusations is plaintiffs' belief that they were treated unfairly by the Commission and that this unfair treatment is manifested in the way the Commission evaluated their evidence vis-a-vis the weight it accorded the evidence of the public witnesses and the witnesses of the applicants.

Plaintiffs' arguments misconstrue the Commission's statutory function and duty in passing upon applications for certificates of public convenience and necessity. Their assertions are grounded on the faulty premise that the Commission's function is to view its proceeding as an economic struggle between the applicants and the protestants. But the Commission's order under review by this court decided that the present or future public convenience and necessity required the three authorizations and that, as the examiners also had held (Report, p.3), the successful applicants were fit, willing, and able to conduct the service shown to be needed by the public. In short, the primary consideration before the agency was the interest of the public, not the relative economic advantages of the applicants and the protestants. Central Motor Lines, Inc. v. United States, 299 F. Supp. 336, 339 (M.D. N.C. 1969).

The function of weighing the evidence and drawing legitimate inferences therefrom is peculiarly within the Commission's discretionary powers. Consolo v. Federal Maritime Commission, supra; Alabama Highway Express, Inc. v. United States, 241 F. Supp. 290 (M.D. Ala. 1965), aff'd, 382 U.S. 106 (1965). The regulation of transportation involves various economic factors and the exercise of an empirical judgment since "The stuff of the process is fluid and changing - the resultant of factors that must be valued as well as weighed." Virginia Stage Lines v. United States, 48 F. Supp. 79, 83 (W.D. Va. 1942). The Commission's determination of the weight to be accorded evidence, so long as the basic facts find support in the record as a whole, will not be reversed on appeal "'even though the court would justifiably have made a different choice had the matter been before it de novo.'" C & H Transportation Co. v. United States, 249 F. Supp. 97, 98 (N.D. Tex. 1965). Finally, the Commission's decision contained all requisite "basic and essential" findings to support its ultimate conclusion that the public convenience and necessity requires the granting of three of the ten applications. The agency need do no more. As a three-judge district court stated in Columbia Transportation Co. v. United States, 167 F. Supp. 5 (E.D. Mich. 1958):

> "Plaintiffs assert that the Commission's Order ignored evidence offered by them, and recite evidence which they claim the Commission ignored. The fact that the Commission did not in its report discuss various portions of testimony offered by plaintiffs, and give its reasons why it did not accept such evidence as controlling its decision, does not, in our opinion, constitute ignoring that evidence. Inasmuch as the Commission's report contained ultimate facts which it found from the record, it cannot be said that the Commission ignored any evidence that was before it. Failure to give to evidence the weight claimed for it by a party does not amount to ignoring such evidence." 167 F. Supp. at 15.

These legal principles are dispositive of the bulk of plaintiffs' complaint to this court. The same also is true of certain important items of evidence.

Transit Studies of
Shippers v. Plaintiffs

Approximately 650 shipper witnesses complained about inconsistent and excessive transit times experienced in their employment of the existing carriers. About 200 of these witnesses corroborated these complaints with studies of shipping documents showing the actual number of days their goods were in transit. In an effort to show the shippers' oral and documented complaints to be unjustified, 14 of the 46 protestants submitted studies of the transit times experienced on their own lines during specified time periods in 1966 and 1967, subsequent to the filing of the applications.

As noted in T.S.C. Motor Freight, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960) aff'd sub nom., 366 U.S. 419 (1961), transit time studies are the conventional type of evidence usually submitted to the Commission in proceedings of this kind and call for ". . . the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision." 181 F. Supp. at 791. The agency decision now before this court made abundantly clear that the Commission carefully weighed and balanced this conflicting evidence. It found the 200 public witness studies, taken collectively, to be ". ... representative of the service these shippers are and have been receiving." 114 M.C.C. at 596. It further found that the 14 protestants' studies, although demonstrating in certain instances expeditious service, not to present ". . . as valid a picture as those introduced by those witnesses supporting the applications." 114 M.C.C. at 599.

Substantial evidence of record supported the Commission's findings. We do not substitute our judgment for the Commission's exercise of informed reasoning on an evidentiary problem committed to its discretion. Indeed, in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, 491-498 (1966), a case participated in by many of the plaintiffs here, the Commission resolved the same evidentiary problem much the same way. In these circumstances we cannot agree with

plaintiffs that the Commission's resolution of this evidentiary problem here was arbitrary or capricious. Indeed, however paramount this transit time evidentiary problem was to plaintiffs, it was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. As we have previously stated, this finding was supported by substantial evidence of a wide variety of defects in the services of existing carriers, not the least of which involved ". . . embargoes which limit the service available or . . . outright refusals to handle . . . traffic." 114 M.C.C. at 600.

Official Notice of Subsequent Events

At plaintiffs' request, the Commission officially noticed in excess of 20 changes which, during the course of this agency proceeding, had taken place in carrier operating authorities in the involved regions by reason of I.C.C. approvals of other certificate applications and consolidations and mergers. Some of these changes resulted from applications filed and processed by plaintiffs themselves during a period when they were fully aware of the pendency of this case and of the possibility that one or more of these applications would be granted.

It is not unusual in a lengthy administrative proceeding of this kind that changes occur in the transport system during the course of the case. In the sound exercise of its discretionary power, the Commission noticed these changes and gave them "full and careful consideration" in its determination. 114 M.C.C. at 57[illegible]. Since the Commission is empowered to find a further need for service by the public without a specific finding of inadequate service by the existing transport system and because plaintiffs have in no way shown that the Commission abused its discretion in doing what they asked it to do, we cannot say the agency acted arbitrarily or capriciously. Dixie Highway Express, Inc. v. United States, 207 F. Supp. [illegible] (E.D. Miss. 1962); Interstate Commerce Commission v. City of Jersey City, supra, 322 U.S. at 512-513.

Ability of Applicants

Plaintiffs contend that the Commission irrationally accorded too much weight to evidence of inadequate service by protestants and too little to some defects in the operations of the applicants. Shipper complaints regarding the services of these defendants are de minimus when weighed against the overwhelming public support for their proposed single line service. Moreover, these complaints were directed to defendants' joint line transportation -- a problem cured by the single line carriage approved by the Commission.

When, as here, there is substantial evidence on the record as a whole of a public demand and need for granting the applications, a certificate award should not be withheld simply because protestants, acting in their own self-interest, point to a few flaws in the operations of the applicants. To do so would simply exasperate the plight of the shippers by maintaining the existing inadequate transport system in status quo while the protestants enjoy freedom from competition. Hence, the Commission has historically considered the public's need for improved transportation as a consideration overriding flaws in the operations of applicants. Cf. Garrison Contract Carrier Application, 53 M.C.C. 195 (1951); Garrison Fast Freight, Inc., Common Carrier Application, 67 M.C.C. 550 (1956); Antrim Thompson Contract Carrier Application, 53 M.C.C. 195 (1951); and Western Auto Transports, Inc., Extension - Trucks, 81 M.C.C. 71 (1959). More recently, in Spector Freight System, Inc., Extension, 111 M.C.C. 889 (1970), the needed certificate was granted notwithstanding the applicant's failure to render reasonably adequate and continuous service during certain past intervals. 111 M.C.C. at 892. Indeed, plaintiff Campbell was the recipient of a certificate despite abuse of its common carrier duty to serve [108 M.C.C. 80, 81-82 (1968)]. Protestant East Texas was granted new operating authority notwithstanding repeated and serious failures to accept shipments required to be transported by its existing certificate. East Texas Motor Freight Lines, Inc., Extension - Mississippi and Louisiana Points, 115 M.C.C. 122 (1972).

Of course, if the applicant's past conduct is of such a flagrantly unlawful character as to render it unfit to perform the proposed service, the Commission, weighing the needs of the public against the unfit operations, can and will deny the application. Cf. Joseph P. Grioli Extension - Brick, 53 M.C.C. 212 (1951), [knowing, willful, and unlawful operations over extended time period]; Barrett Common Carrier Application, 79 M.C.C. 753 (1959), [falsification of records to evade detection of unlawful operations]; and W. J. Dillner Transfer Co. Extension - Alloys, 91 M.C.C. 667 (1962), [noncompliance with an outstanding cease and desist order]. There is no evidence before the court upon which it can find the Commission erred in concluding these applicants are unfit to receive these awards. Indeed, plaintiffs neither urged such a finding before the Commission nor here suggested any agency error in concluding that Johnson, Bowman, and Red Ball are "financially and otherwise fit . . . properly to conduct the proposed services.". 114 M.C.C. at 591.

Finally, plaintiffs argue that the agency paid too little heed to their claim that the applicants will not prospectively perform the expedited transport service proposed in their applications. This is a claim often pressed by protestants to certificate applications. Its resolution obviously calls for the exercise of experienced and expert agency judgment. Here, both the examiners and the Commission rejected plaintiffs' claim. The examiners specifically found the applicants to be ". . . capable of performing the operations proposed" (Report, p.13). The agency considered the question at length and found the challenge to be without merit. 114 M.C.C. at 611.

Was There a Denial of Due Process?

Intervening Shippers

Plaintiffs claim to have been denied due process when post-hearing leave to intervene was granted by the Commission to 41 shippers supporting the Johnson application. The petition for intervention by Lorch-Westway Corp. and 40 other shippers was filed with the Commission pursuant to Rule 72 of its General Rules of Practice on March 23, 1970, one day prior to the due date for filing exceptions to the hearing examiners' report. Attached to the petition for intervention were shippers' exceptions to that report. Pursuant to Rule 72(d),[8/] any reply in opposition "must be filed within twenty days," although the Commission, in its discretion, may grant or deny the motion before the 20 days have expired.

Pursuant to Rule 72(d), the Commission granted leave to intervene seven days after service of the petition. Shippers' exceptions which were filed with the petition were accepted nunc pro tunc and as timely filed.

Plaintiffs disputed the grant of intervention in a petition for reconsideration of that order, filed April 13, 1970, and again in their petition for reconsideration of the Division 1 decision, filed May 22, 1972. Opportunity to be heard on the intervention issue was afforded plaintiffs a third time in their reply briefs to the exceptions filed by the intervening shippers. These opportunities constitute due process. Inland Empire District Council v. Mills, 325 U.S. 697, 709-710 (1945).

8/ I.C.C. General Rules of Practice, Rule 72. 49 C.F.R. § 1100.72 (Supp. 1972). Intervention; petitions. "(d) Copies; service; replies. . . . Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies." (Emphasis added.)

The interest of these shippers in the Commission proceedings and in their review by this court cannot seriously be challenged under 28 U.S.C. § 2323 and Fed. Rules Civ. P. 24(a). Salem Transportation Co. v. United States, 43 F.R.D. 389, 390 (S.D. N.Y. 1967); United Transports, Inc. v. United States, 214 F. Supp. 34, 38 (W.D. Okla. 1962); see Brotherhood of R.R. Trainmen v. B. & O. R.R. Co., 331 U.S. 519, 530-531 (1947); Alexander Sprunt and Son v. United States, 281 U.S. 249, 255 (1930). Applicability of the antitrust laws to the administrative proceeding below, raised by one of several exceptions to the hearing examiners' report by the intervening shippers, was found unnecessary for consideration in reaching its decision by the Commission. 114 M.C.C. at 576-577. The issue was not raised as a substantive matter before this court. Moreover, many of the arguments of the intervening shippers, challenged by plaintiffs, were contained in supplemental exceptions rejected by the Commission. 114 M.C.C. at 577. In these circumstances it is difficult to conceive how plaintiffs were prejudiced by the shippers' participation in the Commission proceeding.

Denial of ABF's Petition to Reopen the Bowman Case

Arkansas-Best Freight System (ABF) urges that it was denied due process when the Commission rejected its post-decision petition to intervene in and to reconsider and reopen the Bowman application. The record shows that ABF protested the applications of Roadway and Bowman at the outset of these consolidated proceedings. However, at the time the case was decided by the Commission on December 30, 1971, ABF was no longer a party to the proceeding before the Commission. This resulted from the voluntary withdrawal of its protest to the Bowman application toward the end of the oral hearing, and the final denial of the Roadway application on March 24, 1970.

In its decision the Commission found that, despite Bowman's manifest intent to utilize Montgomery, Ala., as a gateway and the showing of public need for that service, Bowman's application was technically defective in giving notice of such intent. Therefore, pursuant to its normal practice in situations of this type, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. 114 M.C.C. at 611-612.'

In response to that republication, ABF and several other carriers who were not parties to the proceeding filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. ABF's petition sought each of those. All such petitions were denied or rejected.[9/] Only ABF, of those who filed such petitions, is a party to this action.

ABF cannot serve Montgomery. Therefore, it was not prejudiced by the grant to Bowman to serve Montgomery, and it had no standing in conflict with the matter necessitating republication. Nevertheless, it urges that the Commission erred in failing to reconsider the Bowman application in the light of facts other than those related to Montgomery. The argument is bottomed on the belief that ABF could not have known until republication that Bowman would be able to tack[10/] the rights granted herein to operating authorities acquired by applicant through purchase from Alabama Highway Express in October 1968.[11/]

9/ Order of the Commission, Division 1, acting as an Appellate Division, dated September 1, 1972, page 6.

10/ "Tacking" means a carrier's ability to join two or more grants of authority by the I.C.C. to provide service between points in one territorial grant and points in another territorial grant or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

11/ Notice of the filing of this application in Docket No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc., was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority to be granted, in the Federal Register on June 19, 1968.

Bowman's application, as originally published in the Federal Register in 1969, shows its intentions to tack the proposed routes with authority previously granted, it is asserted by ABF to be a restriction against tacking with after-acquired rights. The Commission has not so construed similar restrictions. With respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co. Extension - Oklahoma, 106 M.C.C. 1, 18 (1967); Ruan Transport Corp. Extension - Ames, Iowa, 110 M.C.C. 389, 390-391 (1969);

Further, the examiners' report showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority sought herein (Report, App. A., p. 25). Yet, despite having actual notice of Bowman's intent from the time of receipt of the examiners' report, ABF said nothing about this matter and made no attempt to seek leave to intervene until more than two years had passed.

ABF did not participate in the Bowman/Alabama Highway purchase application even though it would have been appropriate for it to do so to determine Bowman's intent and to show any claimed material adverse effect which might result from tacking. Closely in point is Howard Hall Company, Inc. v. United States, 332 F. Supp. 1076 (N.D. Ala. 1971), where the court explained:

> "The case of Warren Transport, Inc. Extension—Dubuque to North Dakota, 98 M.C.C. 761 points out two basic principles concerning the tacking of common carrier authority: First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order

> to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension - Liquid Chemicals, 73 M.C.C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M.C.C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969)." 332 F. Supp. at 1082.

Thus, in the period August 1965 - November 1968, ABF, on at least three occasions received official notice that the Bowman route proposed in this case and the routes it acquired from Alabama Highway Express would be tacked. As it had no valid interest in the Bowman service at Montgomery, Ala., and because it knowingly sat silently too long, there is no abuse of the Commission's discretion in the denial of the March 27, 1972, petition. United States v. Pierce Auto Freight Lines, supra, 327 U.S. at 535-536; Interstate Commerce Commission v. City of Jersey City, supra, 322 U.S. at 512-513; Colorado-Arizona Express, Inc. v. United States, 224 F. Supp. 894, 901-902 (D. Colo. 1963); Pilot Freight Carriers, Inc. v. United States, 354 F. Supp. 222, 224 (M.D. N.C. 1972).

Commission Review Procedures

Plaintiffs generally complain that due process was denied by the Commission after the report by the hearing examiners. This denial is alleged to have occurred because the decision of the Commission was made solely by Division 1, consisting of three members, who voted unanimously to grant certificates to the three carrier defendants; because this decision was then reviewed by Division 1, acting as an appellate body, consisting of two of the original division members plus one other new member, who dissented; and because the entire Commission refused to review the proceeding as one involving a matter of general transportation importance.

The authority of Division 1 to issue the Commission's decision and to review that decision as an Appellate Division is, of course, statutory.[12/] The exercise of such a statutory function does not constitute denial of due process. Indeed, when a party has the opportunity to present its views in opposition to the Division 1 decision not once but twice, the requirements of due process have been met. Inland Empire District Council v. Mills, supra, 325 U.S. at 709-710. "The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. . . ." Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 152-153 (1941).

In Studna v. United States, 225 F. Supp. 973 (W.D. Mo. 1964), the plaintiff, as plaintiffs in this case, contended:

> ". . . that he was denied due process of law and his statutory rights because his petition for reconsideration of the Commission's decision was acted upon by the same Division that overruled the examiner's findings . . ., rather than by the entire eleven-man Commission or a separately constituted 'appellate division.' Plaintiff further contends that after Division No. 1 of the Commission (consisting of three members) ruled 2-1 that the Plan 2 operations were illegal, plaintiff was entitled to have his petition for reconsideration of this ruling heard by the entire eleven member Commission or at least a majority thereof.
>
> "Plaintiff contends that this cause should be remanded to the Commission for hearing on the petition for reconsideration by the full Commission or at least by six members thereof."
> 225 F. Supp. at 980.

The court rejected the argument:

> "Plaintiff's contention that the procedure outlined in Rule 1.101(a)(3) and followed by the Commission in this case violated due process is based upon the claim that an appeal to the very body which made the determination from which the appeal is taken is no appeal at all.
>
> "A similar contention was properly denied in A. B. & C. Motor Transportation Co. v. United States (D. Mass.) 151 F. Supp. 367, l. c. 371-372, in which the Court stated:

12/ 49 U.S.C. § 17, under which Division 1 decides cases of this kind. I.C.C. Organization of Divisions and Boards, etc., effective July 27, 1965, Vol. 2, F.Carr.Cas., Statute - Regulations, para. 13,092, et seq.

> 'The arguments are quite without substance. Motions or petitions for rehearing or reconsideration have time out of mind been addressed without thought of constitutional infirmity to the court or judge which, or who, decided the case in the first instance. We see no reason why applications of the same kind to a Commission cannot be similarly addressed.'"
> 225 F. Supp. at 981.

The agency decision now before this court became administratively final, for purposes of judicial review, when Division 1, acting as an Appellate Division, denied plaintiffs' petition for reconsideration. Transamerican Freight Lines, Inc. v. United States, 258 F. Supp. 910, 917 (D. Del. 1966). Plaintiffs' petition requesting the entire Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance[13/] did not affect the administrative finality of the Division 1 denial of the petition for reconsideration. That form of petition, and the discretion vested in the Commission with respect to its disposition, is similar to a petition for rehearing en banc addressed to a Circuit Court of Appeals. 28 U.S.C. § 46(c). "Whether the case will be reheard by the Court of Appeals after decision, and if reheard, by what particular judges, are matters entirely for the Court of Appeals itself." Bridges v. United States, 201 F. 2d 254, 255 (9th Cir. 1952). See Western P.R. Corp. v. Western P.R. Co., 345 U.S. 247, 262, 267-268 (1953).

Plaintiffs do not challenge the lack of a rule by the Commission, as was the case in Western, but rather the exercise of discretion under that rule. In exercising that discretion, the Commission gave plaintiffs "an opportunity to call [the entire Commission's] attention to circumstances in a particular case which might warrant a rehearing en banc" and, as was its usual practice, gave no specific reasons for denying the petition.

Due process and the applicable statute required no more.

13/ I.C.C. General Rules of Practice, Rule 101(a)(4), 49 C.F.R. § 1100.101(a)(4) (Supp. 1972).

Conclusion

There is no error. The order of the Commission should stand. The temporary restraining order is dissolved.

So ordered.

United States Circuit Judge

United States District Judge

United States District Judge

Certificate of Service

I hereby certify that I have this 11th day of August 1973, served a copy of the foregoing Proposed Opinion, Findings of Fact, and Conclusions of Law upon all attorneys of record by first class or air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas M. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1220 Baltimore
Kansas City, Missouri 64105

Robinson, Felts, Starnes & Nations
Post Office Box 2207
Austin, Texas 78767

Bethel B. Larey, Esq.
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Seymour Glanzer, Esq.
Interstate Commerce Commission
Washington, D. C. 20423

Maurice F. Bishop, Esq.
601-609 Frank Nelson Building
Birmingham, Alabama 35203

Jerry C. Prestridge, Esq.
Clark, Thomas, Denius, Winters
& Shapiro
Post Office Box 1148
Austin, Texas 78767

Charles S. Rhyne, Esq.
Courts Oulahan, Esq.
Edward M. Huneke, Esq.
839 - 17th Street, N.W., Suite 400
Washington, D. C. 20006

Robert L. Jones, Jr., Esq.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

and that copies thereof have been air mailed to:

The Honorable Pat Mehaffy
United States Court of Appeals,
Eighth Circuit
Little Rock, Arkansas

The Honorable John E. Miller
Senior District Judge
United States District Court
Post Office Box 1525
Fort Smith, Arkansas 72901

The Honorable Paul X. Williams
United States District Court
Western District of Arkansas
Fort Smith, Arkansas 72901

Donald E. Cross

APPENDIX H

Proposed Findings of Fact, Conclusions of Law and Opinion submitted by Bowman Transportation, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas Corporation, et al,	)	
Plaintiffs,	)	
-v-	)	NO. FS-72-C-65
UNITED STATES OF AMERICA, et al,	)	
Defendants,	)	
and	)	
BOWMAN TRANSPORTATION, INC., et al,	)	
Intervenor-Defendants.	)	

O P I N I O N

This is an action, filed in this Court on October 4, 1972, by sixteen (16) motor carrier plaintiffs[1/] under 28 U.S.C.A. Sections 1336, 1398, 2321, 2325, 2284, seeking judicial review of an order of the Interstate Commerce Commission[2/] served January 24, 1972, styled Herrin

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1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Line, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc. and Jack Cole-Dixie Highway Company, hereinafter collectively referred to as plaintiffs and separately as ABF, Mercury Motors, Alamo, Braswell, C-66, Central, ET&WNC, Eagle, Gordons, Holloway, Mercury Freight, Red Arrow, Red Line, T.I.M.E.-DC, Transcon, Yellow Freight, Roadway and Cole-Dixie. Roadway and Cole-Dixie were permitted to intervene as plaintiffs after filing.

2/ Hereinafter referred to as ICC or Commission.

Transportation Company, Extension - Atlanta, Georgia, 114 M. C. C. 571, granting certificates of public convenience and necessity to three (3) motor carrier applicants[4] under 49 U.S.C.A. Section 307.[3]

PROCEEDINGS BEFORE THE COMMISSION

The proceedings before the Commission were commenced by the filing of an application by Roadway on December 17, 1964. By July 30, 1965, applications had been filed by seventeen (17) other motor carriers and shortly thereafter the number increased to twenty (20), all seeking to conduct general commodity operations between points in the southeast and southwest. Additionally, Bowman sought to serve three points in Missouri, two in Kansas and seven in Arkansas. Pursuant to Commission rules, notice of each application was published in the Federal Register (FR) and protests were filed to the separate applications by multiple carriers. In order to develop an orderly procedure for handling the applications, a prehearing conference was held at the offices of the Commission in Washington on September 9, 1965, following which ten (10) of the twenty (20) applications were consolidated for hearing.[5]

3/ By Order entered December 18, 1969, McLean Trucking Company was substituted as applicant in Docket MC-1124 (Sub-No. 206) in lieu of Herrin Transportation Company, but the original style of the proceeding was maintained by the Commission and will be so referred to herein.

4/ Bowman Transportation, Inc., Docket MC-94201 (Sub-No. 56); Johnson Motor Lines, Inc., Docket MC-106101 (Sub-No. 18); and Red Ball Motor Freight, Inc., Docket MC-22229 (Sub-132).

5/ The applications, so consolidated and the date of filing of each were as follows: Dec. 7, 1964, Roadway, MC-2202 (Sub-No. 273); Mar. 23, 1965, Johnson, MC-106401 (Sub-No. 18); May 17, 1965, Red Ball, MC-22229 (Sub-No. 132); May 18, 1965, Floyd & Beasley Transfer Company, Inc., MC-18088 (Sub-No. 36)(F&B); May 28, 1965, Deaton, Inc., MC 11207 (Sub-No. 203)(Deaton); June 14, 1965, Jones Truck Lines, Inc., MC-111231 (Sub-No. 67) (Jones); June 16, 1965, Strickland Transportation Co., Inc., MC-59680 (Sub-No. 147) (Strickland); June 18, 1965, Herrin Transportation Company, MC-1124 (Sub-No. 206) (Herrin); July 12, 1965, Bowman, MC-94201 (Sub-No. 56); July 30, 1965, Baggett Transportation Company, MC-76177 (Sub-No. 304) (Baggett).

Generally, the territorial scope of the application falls into two categories. Four southwest applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the southeast. Five southeastern applicants, Bowman, Johnson, F&B, Deaton and Baggett,[6] sought to obtain authority to the southwest. Bowman also sought authority to serve Topeka, Kansas and Kansas City, Kansas-Missouri, Carthage and Springfield, Missouri and seven Arkansas points. All twenty of the original applicants represented to the Commission that a public need existed for the proposed services sought. The ten consolidated applications were referred for hearing and recommended order to two Examiners.[7]

Hearings commenced on March 21, 1966 in Washington and continued, with slight respite, for 147 days through August 24, 1967. The hearing sessions were held at eight cities,[8] primarily to accommodate public witnesses located in various sections of the country. 1,009 public witnesses presented oral testimony. There were 1,982 exhibits, many of which were several hundred pages in length and contained studies, depicting traffic flows between the Eastern Seaboard, southeastern and southwestern parts of the country. Evidence in support of 48 protestants was offered by 82 witnesses. The transcript in this proceeding covers 23,423 pages.

At the conclusion of the hearings and prior to the Examiners' Report, volumes of briefs, including abstracts of evidence, were filed. On November 19, 1969, the Examiners served a voluminous Report.[9] They

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6/ Roadway's status and application were somewhat different in that it already operated in both the southeast and southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.

7/ Now termed Administrative Law Judges, but referred to herein as Examiners.

8/ Washington, Atlanta, Dallas, Houston, New Orleans, Kansas City, Tulsa and Memphis.

9/ 32 pages of text and about 275 pages of appendices.

found all of the applicants "fit, willing and able to perform the operations proposed"[10], but recommended denial of all applications. The Examiners reached their conclusion by approaching the applications and the tremendous volume of evidence of public need for additional single-line motor carrier service as if general commodities were not involved. They grouped the supporting witness evidence according to commodities shipped, atomized the evidence of the public witnesses, considered the applications collectively instead of evaluating them independent of the other.

Eight of the applicants filed exceptions to the Examiners' Report.[11] Exceptions were filed by 41 shippers, Lorch-Westway, et al, who were permitted to intervene. Replies to the exceptions were filed and the matter was considered by the Commission, Division 1.

In its decision, the Commission found that the Examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, would be presented by grouping of the supporting evidence on a geographic basis". Herrin, 114 M.C.C. at 591.[12]

After an extensive analysis and comparison of the evidence in support of and in opposition to the application, the Commission concluded

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10/ Examiners' Report, p. 4

11/ Neither Roadway nor F&B filed exceptions. As to Roadway, the denial by the Examiners became the Order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. The exceptions of the other applicants nominally embraced F&B, which had the effect of staying the finality of the Examiners' Report as to it. However, F&B's application was denied. Herrin, 114 M.C.C. 612.

12/ The restatement of the supporting evidence, organized geographically appears in Appendix E, Herrin, 114 M.C.C. at 636-756.

that the applications of Bowman, Red Ball and Johnson should be granted. Herrin, 114 M.C.C. at 599, 612-614.[13] It found (p. 599):

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."

THE AGENCY DECISION, SUBSEQUENT PETITIONS AND THE FINAL COMMISSION ORDER

The Decision and Report of the Commission, Division 1, served January 24, 1972, was unanimous. Following this unanimous order and prior to May 24, 1972, petitions for reconsideration and petitions under Rule 102 of the Commission's Rules of Practice were filed by multiple protestants and the successful applicants replied. By Order served September 6, 1972, a majority of Division 1, as then constituted, denied the various petitions for reconsideration and under Rule 102 as to the applications of Bowman, Johnson and Red Ball.

The protestants then filed petitions under the Commission's General Practice Rule 101(a)(4) requesting the entire Commission to rule and announce that the proceeding involved an issue of general transportation importance. This procedure is similar to the request for a hearing en banc by the federal circuit courts of appeal. Following consideration of these petitions by the full Commission, they were denied by a vote of 6-3.

13/ None of the unsuccessful applicants is a plaintiff and there is, of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, Fn. 11, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

The issues involved were raised and considered during the administrative process, here for judicial review, in:

1. Original briefs filed by substantially all the parties.

2. Exceptions and supplemental Exceptions to the Examiners' Report and replies thereto.

3. Petitions for reconsideration of the Report and Order of the Commission and replies thereto.

4. Petitions under Rule 102 and replies thereto.

Obviously, the administrative proceeding was thorough and exceedingly well documented. The Report and Order of the Commission contains 225 pages, including a detailed summary of the testimony of the public witnesses.

PROCEEDINGS BEFORE THIS COURT

Following conclusion of the administrative proceeding and on October 4, 1972, this action was filed in this Court by the 16 party plaintiffs. Subsequently, two other carriers were given leave to intervene as plaintiffs. All the plaintiffs, except one (ABF), were protestants to one or more of the applications which were granted. It is significant that most of these applications were filed before any transit time studies of the plaintiffs and that plaintiffs therefore had knowledge of these proceedings prior to their transit studies.

On November 7, 1972, a member of this panel entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity until completion of judicial review.

A briefing schedule for the parties was fixed by the Court which expired on July 16, 1973. On June 29, 1973, the plaintiffs filed a motion for leave to file a supplemental complaint seeking review of orders of the Commission served December 18, 1972 and May 29, 1973, granting, in part, the application of Jones Truck Lines, Inc., Extension - Atlanta,

Ga., 117 M.C.C. 586, and denying petitions for reconsideration thereto. This motion to file supplemental complaint was opposed by the Commission and the intervenors and was denied by this Court on July 24, 1973, on which date, the subject proceeding was submitted for decision and order on the merits.

THE VENUE PLAINTIFFS

The plaintiffs filed this action in this Court on the basis of an alleged interest and residence of ABF and Mercury Motors. Title 28, Section 1398, U.S.C.A., provides that such an action:

> ". . . shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action."

ABF did file a protest to the Bowman application, but as the hearings approached conclusion, ABF withdrew its protest to the Bowman application. On page 19,809 (of a transcript of 23,423 pages), counsel for ABF stated:

> "Mr. Examiner, before proceeding with the testimony on behalf of Arkansas Best Freight System, Inc., I would like to state that at one stage in the proceeding -- I believe it was either the prehearing conference or again at the opening of these hearings -- a protest was entered on behalf of Arkansas Best Freight System, Inc., in the Bowman case as well as in the Roadway case and that in view of the amendments in the Bowman case, we desire to withdraw the protest of Arkansas Best in the Bowman case. We have not done that before.
>
> Arkansas Best remains as a Protestant in the Roadway case only."

At the time of its protest and the hearing, Mercury Motors operated over regular routes between Memphis and Fort Smith by way of Little Rock. It appeared at the hearing in support of its protest to the Bowman application and as a witness in support of Gordons protest to the three applications granted. The Bowman application was amended to exclude Fort Smith and the Bowman grant is restricted against the

transportation of traffic "originating at or received from connecting carriers at Memphis, Tennessee and points in its commercial zone and destined to "points west of the Mississippi River.

THE STATUTE INVOLVED

The controlling statute is Section 207 of the Act (49 U.S.C.A. § 307) which provides, in pertinent part, that:

> "A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity." (Emphasis supplied.)

THE ISSUES INVOLVED

The basic question here involved has been succinctly stated and consistently judicially reaffirmed as follows: 14/

(1) "Whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a review of the record as a whole."

In Patterson v. United States and I.C.C., 178 F.Supp. 771 (1959), Judge Miller of this panel expressed the basic issue as follows:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence."

(2) Did the Commission commit remandable error in according more weight to the transit time studies of more than 200 public shipper witnesses than it did to the transit time studies of 14 interested motor carrier protestants?

14/ Carolina Freight Carrier Corporation v. U.S., 297 F.Supp. 848, 850.

(3) Did the Commission have authority to and did it properly consider record evidence subsequent to filing the subject applications?

(4) Was the issue of economic mutual exclusivity properly and timely raised; if so, was it pertinent and properly resolved?

(5) Did the Commission commit remandable error in refusing to permit ABF to repudiate its withdrawal of its protest to the Bowman application and to intervene following close of the hearing on the basis of republication involving a point in which it admittedly had no interest and without any effort on the part of ABF to exhaust its administrative remedies?

THE INVOLVED AREA - GENESIS OF THE ORDER

In Cassens Transport Company, Extension - Three States, 67 M.C.C. 410, the Commission stated:

> "We do not conceive our function in proceedings such as this to preserve the status quo at all costs, denying improvements or augmentations in transportation service. The transportation industry should be dynamic, rather than static; and we would be remiss in our duty, if we hampered, rather than promoted, the easy flow of commerce."

To the same effect see Capitol Bus Company, Extension - Washington, D.C., 69 M.C.C. 447.

Over a number of years, the Commission, with prophetic vis. has recognized the expanding development and increasing importance of the South and the increasing transportation importance and needs of the southeast-southwest territory. In 1956, in Walker Hauling Company, Extension, No. MC-103051 (Sub-No. 58), the Commission found that there was extensive industrial development in the South, including Georgia and Florida and that such industrial expansion would continue. In 1957, in Herrin Transportation Company, Extension - Jacksonville, 69 M.C.C. 629, the Commission found:

> "The southwest and southeast territories here involved have enjoyed a tremendous commercial growth, and this is particularly true of Florida, Louisiana, and points in Texas such as Dallas, Houston, San Antonio and Fort Worth."

In 1960, in Roadway Express, Inc., Extension - Birmingham, Dallas, Houston, 82 M.C.C. 689,[15/] it was noted that "a substantial volume of traffic is now moving between Birmingham and points beyond in the southeast on the one hand, and, on the other, points in Texas". Upon review, the Commission there concluded that:

> "The evidence establishes that there is a substantial amount of traffic now available which moves between and beyond the termini of the routes here sought, and a steady growth in this traffic may reasonably be expected."

The Commission has found and recognized that transportation services between the southeast and southwest have "failed to keep pace with the industrial growth of these territories". In 1965, in Braswell Freight Lines, Inc., Extension - Atlanta, 95 M.C.C. 457, in its first order in that case,[16/] the Commission held that the Joint Board was in error in failing to approve the subject application:

> "Especially in the light of the continuing growth, population and industrial output in the southeast and southwest. It was

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15/ In that proceeding, Roadway took a position wholly inconsistent from that here asserted.

16/ Following the first Commission Order, a Three Judge District Court remanded the case to the Commission, on other grounds, for further consideration (Dixie Highway Express, Inc. v. United States (1965), 242 F. Supp. 1016). Upon remand, the Commission extended its former report and reaffirmed its earlier decision (100 M.C.C. 482). On further judicial review, the District Court granted a motion for enforcement of the court's prior judgment and enjoined the Commission, 268 F. Supp. 239. This decision was reversed by the United States Supreme Court in United States, et al v. Dixie Highway Express, Inc., et al, 19 L. Ed. 2d 639. In that case, the Supreme Court rejected the plaintiff's arguments, here repeated (Pl. Br. p. 3), that the Commission should "grant existing carriers an opportunity to remedy deficiencies in service before issuing a new certificate", and that protesting carriers have a "property" or "business interest" in this certificate that insulates them from grants of authority.

> the existence of similar factors which moved the Commission in 1960 to grant authority to Dallas-Fort Worth and Houston to protestants Roadway and Mercury.
>
> Even with the grant of the Roadway and Mercury certificates and with the obvious efforts of other protestants to improve their abilities to serve the shipping public, it is clear that existing transportation services have failed to keep pace with the industrial growth of these territories. A large percentage of shipments must still move in 3 or 4-line hauls. Considering the extensive shipper support, the documented population growth, the continued industrial expansion of the southeast and southwest, and the dearth of single-line and relatively efficient joint-line services in these territories, we are convinced that there exists a need for improvement in service which protestants despite their undoubted efforts have been unable to provide." (Emphasis supplied.)

These applications followed the specific findings and conclusions of the Commission, judicially approved, as above noted.

THE SCOPE OF JUDICIAL REVIEW

This is not a novel proceeding in this Court. It is unique only in relation to the volume of testimony and exhibits involved and the detailed and extended consideration applied to the record in the administrative process. The basic legal principles involved remain the same. In the discharge of our responsibility for judicial review, we have the benefit of our prior guide lines, carefully formulated, firmly accomplished and judicially approved by other reviewing courts. In Patterson v. United States and I. C. C., 178 F. Supp. 771 (1959), as here, an action was brought to set aside an order of the ICC. In writing for the Court, Judge Miller (of this panel) stated:

> "The scope of the review by the Court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence.
>
> The weight to be given by the Court to an administrative finding is well established. In

Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S. Ct. 108, 111, 56 L. Ed. 308, the Supreme Court observed that it would 'not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling.' In Georgia Public Service Commission v. United States, 283 U.S. 765, 51 S. Ct. 619, 623, 75 L. Ed. 1397, the Court said:

> 'It is not our province to enquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the consistency of its conclusion with those reached in similar cases.'

In a recent case arising in this Circuit, involving a final order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D. C. D. Minn. 1959, 169 F. Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S. Ct. 140:

> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S. Ct. 589, 87 L. Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D.C., 158 F. Supp. 248; Minneapolis & St. Louis Railway Co. v. United States, D. C., 165 F. Supp. 893.'

The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D. C. W. D. Mo. 1955, 134 F. Supp. 502."

The Patterson case was cited with approval in Zuzich Truck Line, Inc. v. United States and ICC, 224 F. Supp. 457, at 468 (1963), as support for the statement that:

> "The court must sustain the Commission if its findings on the issue of present or future public convenience and necessity are supported by substantial evidence."

In Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (1966), a three-judge court of this division (containing two members of this panel, Circuit Judge Mehaffy and District Judge Miller) noted the limited scope of judicial review, stating that the Court:

> ". . . is not at liberty to substitute its opinion of the evidence or conclusions or judgment for that of the Commission. Such determinations are solely within the province of the Interstate Commerce Commission and the Congress has expressly delegated these matters to the expertise of the Commission."

Substantial evidence is not the equivalent of a preponderance of the evidence but is such "relevant evidence as a reasonable mind might accept as adequate". The mere fact that the Court would have reached a different conclusion is immaterial. Consolo v. Federal Maritime Comm'n, 383 U.S. 607; Garrett Freight Lines v. United States, 305 F. Supp. 149. Mr. Justice Holmes' definition of substantial evidence is still a polestar of judicial review. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229, 59 S. Ct. 206, 83 L. Ed. 126:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."

If there is a rational basis for the conclusions reached by the Commission, the judicial function is exhausted. Mississippi Valley Barge Lines v. United States, 292 U.S. 282, 54 S. Ct. 692, 78 L. Ed. 1260 (1934); Interstate Commerce Commission v. Inland Waterways Corporation, 319 U.S. 671, 63 S. Ct. 1296, 87 L. Ed. 1655 (1943).

In defining substantial evidence affirmatively, in Superior Trucking Company v. United States, 306 F. Supp. 872, 875 (N.D. Ga. 1969), the Court said:

> "In considering plaintiffs' objections, we must be guided by the standard of judicial review set out in the Administrative Procedure Act, 5 U.S.C. §1009(e), requiring 'substantial evidence' on the record as a whole. Substantial evidence is something less than the weight of the evidence, Short Lines, Inc. v. United States, 290 F. Supp. 939, 941 (D.R.I. 1968). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966). Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept to support a conclusion'. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence . . . must do more than create a suspicion of the existence of the fact to be established. . . . [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' N.L.R.B. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S. Ct. 501, 505, 83 L. Ed. 660 (1939)."

The plaintiffs argue that the action of the Commission "was arbitrary, capricious, an abuse of discretion, and not in accordance with law", and that these allegations are within the ambit of the Administrative Procedure Act (APA), noting that in Columbia Shippers and Receivers Ass'n, Inc. v. United States, 301 F. Supp. 310, 319 (Del. 1969), the Court said that it must apply:

> ". . . in addition to the 'substantial evidence' test generally applicable to this action, the standard of review set forth at 5 U.S.C. §706(2)(A):
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> '. . . the reviewing court shall
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> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"

Generally, if there is substantial evidence to support agency

action, it cannot be said to be arbitrary, but we desire to fully consider and will seek to determine every issue here raised. The plaintiffs allege that the orders of the Commission were arbitrary in that plaintiffs contend:

(1) The Commission gave consideration to "service restrictions" of the plaintiff carriers but did not give adequate consideration to alleged similar service restrictions of the applicants.

(2) The Commission took official notice of an industry publication (American Motor Carrier Directory) that one of the protestant carriers had closed one of its Mississippi terminals and alleged that it did not note, in the same publication, that Red Ball had reduced its number of terminals.

(3) The Commission gave greater weight to transit time studies of applicants and shipper witnesses than to those of plaintiffs, specifically, that the Commission gave "full credit" to shipper-sponsored transit time studies and less weight to plaintiffs' studies.

(4) The Commission did not give proper consideration to the ability of plaintiffs to perform their transit time studies.

As did the Commission, we have considered each of these issues.

First, the distinction should be noted between alleged "service restrictions" and "tariff restrictions". A service restriction is one where the carrier declines or refuses to provide service or imposes an embargo on the movement of certain traffic. A tariff restriction is one where the carrier provides the rate or charge for the movement of specified commodities between designated areas or points. For example, a carrier may publish what is commonly termed as a "two or three line haul restriction". This means that the carrier will participate, through interline, in the movement of this traffic between designated points or areas on the basis of through rates (generally lower) only if the movement by participating carriers does not exceed two or three, as the case may be. This is entirely different from a refusal of a carrier to transport

authorized shipments which it is obligated, under the Act and its certificates to handle. In the subject proceeding, the Commission specifically found that (114 M. C. C. 596):

> "About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the out right refusals of authorized carriers to handle traffic."

After detailing multiple objections, the Commission further noted (114 M. C. C. 597):

> "Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers."

Tariff publications relating to two or three line hauls deal with the rate at which the traffic will move. Refusals of service constitute a blockade or embargo under which the carrier refused to handle the traffic or participate in the movement at any published rate. The fact is the Commission correctly found that approval of the subject applications would materially reduce the impact of any tariff restrictions because even in those instances where a two or three line haul restriction was in effect it would reduce the number of carriers required to handle the movement from origin to destination and in almost every instance involved in this proceeding, provide for the movement from origin to destination with two and not to exceed three carriers. The Commission did not find any service refusals on the part of the successful applicants.

Additionally, the Commission found that (114 M. C. C. 596):

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic.

> Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive."

and that (114 M.C.C. 597):

> "Approximately 110 shippers complaint about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing."

Further (114 M.C.C. 597):

> "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service."

and that (114 M.C.C. 597):

> "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States."

All of these findings are supported by and documented in Appendix E to the Commission Report. 17/

In such cases of carrier deficiencies and refusals, the Commission has the duty to procure additional transportation services to carry out the

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17/ For example, the following witnesses complained of protestants' service restrictions, embargoes and outright refusals to deliver shipments (references are to witness numbers and transcript pages): 4(6) - 1724-1756; 15(26) - 2210-2298; 36(77) - 3561-3573; 40(89) - 3800-3822; 52(124) - 4499-4502(f); 54(127) - 4530-4555; 56(134) - 4710-4738; 2(861) - 17929-17947; 22(426) - 10848-10870; 3(214) - 6741-6773; 1(855) - 18430-18451; 3(866) - 18031-18055; 1(30) - 2417-2435; 2(31) - 2436-2453; 3(35) - 2489-2511; 8(125) - 4502G-4502-X; 20(868) - 15064-15094; 1(13) - 1920-1973; 3(27) - 2298-2335; 4(28) - 2339-2440; 5(53) - 3278-3302; 7(78) - 3573-3602; 13(210) - 6622-6637; 17(460) - 11458-11490; 35(252) - 7576-7600; 1(325) - 9197-9235.

purposes of the Act and the National Transportation Policy.

In Nebraska Short Line Carriers, Inc., Common Carrier Application, 79 M.C.C. 599, 613[18], the Commission stated that:

> "Where, as here, the existing carriers are shown to have so conducted their operations as to result in serious inadequacies in the service available to a large section of the public, one effective method of correcting the situation is by granting of authority for sufficient additional service, and, in fact, we are charged with the duty of procuring such additional facilities as may be necessary to carry out the purposes of the national transportation policy."

In Galveston Truck Line Corporation v. Ada Motor Lines, Inc., 73 M.C.C. 617, 628, the Commission noted the duty of motor carriers to perform authorized service and warned that they would be held "strictly accountable for its performance" in stating:

> "We think it beyond doubt that the Interstate Commerce Act imposes upon common carriers by motor vehicle subject to our jurisdiction the clear and unmistakable duty to provide adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce within the scope of their holding out to the public, and that they are obligated to accept and transport all freight offered to them in accordance with the provisions of their published tariffs. This duty is almost an absolute one; and, if the public is to be adequately protected, common carriers must be held strictly accountable for its performance."

In Planters Nut & Chocolate Company v. American Transfer Company, 31 M.C.C. 719, 729, the Commission declared:

> "Common carriers by motor vehicle are obligated to accept and transport all freight offered to them in accordance with the provisions of their tariffs. The refusal of the group-two carriers to accept and transport complainants' freight tendered to them by Rutherford and the group-one carriers was and is unlawful. If the

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18/ Affirmed, 148 F.Supp. 31, but reversed on other principles in 371 U.S. 156.

> group-two carriers desire to continue to serve the public as common carriers, they should serve all of the public, including complainants."

And in Montgomery Ward & Company, Inc. v. Consolidated Freightways, 42 M.C.C. 225, 231, the Commission noted:

> "Every common carrier is under a duty to receive and transport any property tendered to it for transportation, provided the property is such as it holds itself out as willing to carry, or as it usually carries."

In Pensick & Gordon, Inc. v. California Motor Express, 302 F. 2d 391, a shipper filed suit against motor carriers for damages for the alleged breach by the carriers of their duty to render reasonable service without discrimination. The District Court dismissed the complaints for lack of jurisdiction and the shipper appealed to the United States Court of Appeals, 9th Circuit, which held that the only recourse of the shipper was with the Interstate Commerce Commission, and that whether carriers have failed to provide a reasonable and nondiscriminatory service is a question that can be answered only by the Commission, stating that:

> "Whether a carrier has without jurisdiction failed to provide reasonable and nondiscriminatory service is a question of defining the carrier's duty in the framework of the National Transportation Policy and only the Commission can answer that question."

At 114 M.C.C. 605, Fn. 42, the Commission noted that:

> "42. The fall 1971 edition of the American Motor Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points: Jackson."

We are not persuaded that this fact was of crucial importance in this proceeding. The plaintiffs argue that the Commission should have noted, in the same publication, the closing of some of the Red Ball terminals or agency stations. Significantly, the plaintiffs have never denied the fact found that "Dixie serves only 4 of the 10 Mississippi points sought to be served by Bowman and maintains terminals at only 2. . .". In their

petition for reconsideration filed in May 1972, the plaintiffs availed themselves of the opportunity afforded by the Commission's General Rules of Practice to rebut any reference which conceivably could be drawn from this one fact. They have not claimed the fact was unlawfully noticed or that it unduly influenced the Commission's decision to their material prejudice. Cf. American Trucking Associations, Inc. v. Frisco Transportation, 358 U.S. 133, 79 S. Ct. 170, 3 L. Ed. 2d 172 (1958). They argue that the Commission should have coupled its Fn 42 notice with notice of the alleged closing of agency stations by Red Ball. The number of Red Ball terminals was only one of the multiple factors considered by the Commission in selecting Red Ball as the southwest applicant to fulfill the public need for service. The Commission considered this specific issue in the petitions for reconsideration. In its reply to petitions for reconsideration, Red Ball showed that it still operated more terminals in the southwest than any of the protestants. Specifically, it showed the number of terminals maintained by Red Ball and other motor carriers in the States of Colorado, New Mexico, Oklahoma, Texas, Arkansas, Louisiana and Mississippi. Red Ball had more terminals than any other carrier.

The plaintiffs' argument is a two edged sword. If the reduction in number of terminals since conclusion of the hearings is to be used as an argument against the Red Ball grant, then the fact that subsequent to the hearings Johnson opened 76 additional terminal facilities and Bowman opened 26 additional terminal facilities would emphasize the grant to these carriers, but all of this information was communicated to the Commission in petitions for reconsideration and replies thereto. The plaintiffs have not shown that this rather insignificant officially noticed fact unduly prejudiced them in any manner whatsoever.

Perhaps the principal thrust of plaintiffs' brief was the contention that the Commission gave greater weight to transit time studies of

applicants and shipper witnesses than to those of the plaintiffs.

Admittedly, the Commission thoroughly considered all transit time studies presented and we may add it did so with exceptional diligence and detail. The obvious work devoted to and time consumed in preparation of the 225 page report is exceptional. We recall few instances where any administrative or judicial proceeding has been so marked with detailed basic findings and facts.

In summarizing the 14 protestants' transit time studies, the Commission stated (114 M. C. C. 599):

> "The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during a specified period. The 1-year study of all the relevant traffic handled by one carrier demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration."

The plaintiffs "interpret" and "assume" that "little, if any, weight was given to those general service exhibits of the protestants" (Pl. Br. p. 127) and argue that more substantial weight was given to the transit time exhibits of the applicants and supporting shippers. As noted, the weight accorded to the various transit time studies, and the reasons therefor, was

clearly stated by the Commission. Additionally, all of the documents are summarized in the Order, particularly Appendix E.

The Facts show that the 14 transit time studies presented by motor carrier protestants were for comparatively limited and selective periods of time: 6 were for only 1 week; 3 were for 2 weeks; 1 was for 1 month; 1 for 2 months; 1 was selected for periods of 2 days; 2 for 3 months; 1 for a number of 1 week periods; 1 for a week and a month; 1 was for 1 year.

Only two protestants had transit time studies of over two months, one was Consolidated which had a one year study, noted by the Commission (p. 599, Order), and one non-plaintiff protestant (GFA) had a study of 3 months.

After noting and considering all the arguments here repeated, the Commission stated (Order, p. 600):

> "Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic, pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings."

650, or approximately 80% of the 824[19/] shipper witnesses who testified in this proceeding had specific complaints of inadequate and inconsistent transit time and expressed a dire need for reliable and consistent service between the Bowman authorized and proposed points.

The supporting shippers and receivers testified that as a result of inconsistent and excessive transit times experienced on a recurring basis,

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19/ This represents the 933 witnesses who testified less the 109 which supported the application of Roadway.

their business has been materially hampered by an inability to

-- reduce inventories where their storage space and investment capital were limited.

-- maintain production schedules where they are dependent upon consistent service.

-- give timely delivery or serve customers on special orders, for example, on special and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timely deliveries are not effected.

-- take short term discounts.

-- obtain job site delivery to metropolitan areas where construction crews and production lines frequently are awaiting arrival of goods and supplies.

-- carry in stock the multiple sizes, colors and grades of such items as carpets, textiles, tile and paint, thereby making it necessary to order from brochures or samples and to depend upon expeditious, consistent motor carrier service.

-- order from preferred markets.

Additionally:

-- the fact that quicker and more dependable service is available between the west coast and Texas points, militates against the southern market.

-- installations cannot be made in the time and manner required.

-- companies have been unable to advise customers as to the delivery of special orders of merchandise not in stock.

-- many companies have been required to pay higher or premium prices in order to insure a reasonable delivery time from now preferred markets.

The plaintiffs urge this Court to judicially hold that in the study and application of such transit time exhibits, the Commission, as a matter of law, must give greater weight to the records of protestant motor carriers, a position which the Commission previously has rejected in Strickland Transportation Company, 77 M.C.C. 655, 663, stating:

> "We cannot accept the general proposition that a carrier's records are accurate and

> that a shipper's records are not, or that the carrier's records are more likely to be accurate than the shipper's."

It is well settled that reviewing courts should not weigh the evidence. As was recognized in Arrowhead Freight Lines v. United States, 115 F. Supp. 537, 544 (S.D. Cal. 1953):

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made in other cases, is beyond our province." (Citations of five Supreme Court cases omitted). (Emphasis supplied.)

We are persuaded that the Commission gave careful consideration to those transit time studies introduced to support the applications and those presented in opposition, then measured them in comparison to each other. In regard to the transit time studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 598:

> "The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7 day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1-and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving."

In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications.

In sum, the transit times studies of the 14 protestants generally relate to short periods of time and were made when protestants were confronted with the possibility of additional competition.[20] Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. In Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482 (1966),[21] in circumstances much the same as here, the Commission said at 499-494:

> "As noted, periods of time covered by the protestants' service exhibits generally occurred subsequent to the notice or commencement of the hearing herein. Thus, most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise. We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive

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20/ One protestant, Consolidated, introduced a transit time study covering a one year period showing that in the carriage of 54,681 shipments (more than 45% of the shipments reflected in all of the protestants' time studies), it achieved an on time performance of only 33.5%. The Commission was clearly justified in finding contrast between the long term study of all the relevant traffic and "certain instances" of "expeditious service" in the short term studies. It certainly was not irrational for the Commission do do so, as plaintiffs mistakenly charge. (Pl. Br., pp. 157-160).

21/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also rejected by that court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

> service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected areas."

This standard conforms to an even earlier judicial stamp of approval to the Commission's exercise of discretion in a similar situation. In T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, Circuit Judge Brown explained, 186 F. Supp. at 791-792:

> "The [transit time] evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." (Emphasis supplied.)

The Commission found that approximately 650 shippers complained about inconsistent and excessive transit times, and that over 200 of these witnesses introduced transit time studies demonstrating the undependable service they presently received. 114 M.C.C. 596.

To state this finding another way, (1) 650 public witnesses orally complained about excessive transit times and (2) 200 supporting witnesses corroborated those complaints with abstracts of shipping documents. These abstracts or "transit time studies" showed the actual number of days

elapsing between the receipt of the shipment by the "originating carrier" and its delivery at destination by the "delivering carrier".[22/]

The 650 oral complaints respecting excessive transit time were received in evidence and weighed by the Commission in reaching its findings. Oral transit time complaints by the public bottomed the certificate award approved in West Brothers, Inc. v. United States, 303 F. Supp. 117 (S.D. Miss. 1969). Moreover, this rule of evidence in I.C.C. operating rights cases has been observed for many years. As the Commission put it in 1957 in Bostwick Common Carrier Application, 72 M.C.C. 317, 324:

> ". . . we [do not] agree with protestants that the admission of [oral] evidence relating to specific delays experienced by shippers without underlying documents in support thereof was improper. True, underlying documents would serve to corroborate such evidence, but, historically, evidence relating to the type and character of service received by shippers and receivers, gleaned from their own personal knowledge and gained during the conduct of their businesses, has been accepted."

In this huge proceeding over 200 of the 650 public witnesses corroborated their oral complaints as to unsatisfactory transit times with abstracts of underlying shipping documents prepared and maintained in the normal and ordinary course of their business. Oral testimony thus corroborated is entitled to and has historically been accorded "more than merely nominal weight by" the Commission. T.I.M.E. Freight, Inc., Extension - Alternate Routes, 89 M.C.C. 241, 244 (1962).

In an effort to refute the public's oral and documented complaints as to excessive transit times, 14 of the 46 protestants in the consolidated proceeding submitted transit time studies. After considering this evidence

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22/ When a shipment is transported in "single line service" it is originated and delivered by the same carrier; when it is transported in "joint line service" it originates on the line of one carrier and is delivered on the line of another.

at length, the Commission found ". . . that protestants' studies do not present as valid a picture as those introduced by [the public witnesses]. 114 M.C.C. at 599; App. C at 764, 767, 770, 772, 774, 776, 777, 779, 780, 782, 785, 786, 787, 792. In sum, the Commission simply gave greater evidentiary weight to 200 studies sponsored by impartial public witnesses than it accorded 14 studies submitted by carriers having a vital interest in defeating the applications.

We have not been convinced that the Commission was wrong.

In a similar situation in T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777, aff'd 366 U.S. 419, Chief Judge John R. Brown of the Fifth Circuit responded to the plaintiff's argument that the agency accorded too much weight to transit time complaints of shippers and too little to the transit time studies of protestants, stating:

> "The evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission, in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." 186 F. Supp. at 791-792.

Judge Brown's opinion in T.S.C. is not the only guideline supporting the Commission's determination here. Bringing to bear its expertise developed over many years in deciding applications for new or extended operating authority, the I.C.C. resolved essentially the same evidentiary

problem in precisely the same way in 1966 in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, saying:

> "We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected area." 100 M.C.C. at 493-494.

Tacitly admitting established transit time deficiencies, the plaintiffs argue that they should have been given an opportunity to remedy the defects in their transit time, but this argument recently has been considered and rejected by the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L.Ed. 639 (1967)

In the Dixie Highway litigation the Commission awarded a certificate to Braswell notwithstanding that during the course of its consideration of Braswell's application, protestants Mercury and Roadway were newly certificated to operate over some of the routes involved in Braswell's proposal. There, as here, Mercury and Roadway, among others, claimed that these changed circumstances required a denial of the Braswell application because the newly certificated carriers had not been found to be rendering inadequate service. A three-judge district court agreed, and annulled the Braswell award. Dixie Highway Express, Inc. v. United States, 268 F.Supp. 239 (S.D. Miss. 1967). The Supreme Court reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L.Ed. 2d 639 (1967) saying:

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and

> necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is, of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v. Drum, 368 U.S. 370, 374, 7 L. Ed. 2d 360, 363, 82 S. Ct. 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v. Parker, 326 U.S. 60, 70, 89 L. Ed. 2051, 2062, 65 S. Ct. 1490 (1945); see Schaffer Transportation Co. v. United States, 355 U.S. 83, 90-91, 2 L. Ed. 2d 117, 122, 123, 78 S. Ct. 173 (1957)." 389 U.S. at 411-412.

The Supreme Court then remanded the case to the District Court for further action consistent with its ruling. Reversing its prior annulment in light of the Supreme Court's holding, the three-judge District Court said:

> "But [our prior criticism of the treatment of the Mercury and Roadway certificates] did not peoperly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. (Footnote omitted) A sound discretion in the exercise of highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision."

Contrary to plaintiffs' argument, the Commission did give consideration to the ability of applicants to perform their transit time proposals, even though no exceptions were taken to the Examiners' finding that the applicants were capable of the service they proposed. [23/] The

23/ Examiners' Report, p. 4

Commission said (114 M. C. C. at 611):

> "Some of the protestants challenge the feasibility of the proposal of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in West Brothers, Inc., Extension - Baton Rouge, La., 106 M. C. C. 792, 799 (1968), modified on other grounds at 108 M. C. C. 485 (1969):
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> > 'Evidence that applicant's transit time for existing services over a shorter distance is more than . . . [the proposed transit time] is not conclusive proof that it will not render . . . [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.'"

The plaintiffs further argue that the Commission failed to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers. At page 576 of its order, the Commission stated:

> "As indicated in appendix D, certain protestants request that official notice be taken to specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. West Brothers, Inc., Extension - Baton Rouge, La., 108 M. C. C. 485, 489 (1969); and Ayers Extension - Cheyenne, Wyo., 99 M. C. C. 795, 797 (1965). Accordingly, the actions affecting carriers not parties". (footnote: "Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Saia Motor Freight Line, Inc., and Terminal Transport Co., Inc.") "to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations."

Specifically, we find that the Examiners or the Commission, or both, referred to the following orders relating to subsequent changes:

(1) McLean-Control-Herrin, MC-F-10121, Merger, decided 8-5-69 and substitution of McLean for Herrin as applicant. (ERO, p. 2 and appendix A, p. 1) (O, p. 571, 600, 615, and 627).

(2) "Since the close of the hearing Herrin, Braswell and Mercury Freight also obtained authority to operate between Atlanta and Dallas and Atlanta and Houston". (ERO p. 16, footnote 13.)

(3) Roadway Exp-Control-West, MC-F-10178, decided June 26, 1969. (ERO p. 22, and appendix A, p. 6) (O, p. 782)

(4) MC-111383, Sub 16, Braswell Motor Freight (ERO, p. 27, and appendix D, p. 56) (O, p. 792)

(5) MC-75320, Sub 106, Campbell Sixty-Six Exp. (February, 1969) (ERO, p. 27, and appendix D, p. 35) (O, p. 777)

(6) MC-F-10585, Campbell Sixty-Six-Merger-United (November, 1969) (O, p. 611 and 777)

(7) MC-F-10219 and MC-75320, Sub 144, Campbell Sixty-Six (O, p. 777) (April 1969)

(8) MC-75320, Sub 150, Campbell Sixty-Six (April 1970) Ext., Atlanta (O, p. 777).

(9) MC-F-9730, Herrin-Purchase (Portion)-Tamiami, (ERO, appendix A, p. 4)

(10) MC-F-9921, Bowman-Purchase (Portion) Alabama Highway Express (August 1968) (ERO appendix A, p. 25) (O, p. 585)

(11) MC-94201, Sub 86, Bowman Trans., Inc. (July 1971) (O, p. 575 and 772)

(12) 104 M.C.C. 737 - Yellow Freight-Merger-Watson-Wilson (December 1968) (ERO appendix D, p. 12) (O, p. 764)

(13) MC-F-9918, Mercury Freight Lines, Inc.-Purchase (Portion)-Sam N. Cole (April 1969) (ERO, appendix D, p. 27) (O, p. 771)

(14) West Brothers-Extension-Natchez and Baton Rouge (ERO appendix D, p. 29) (O, p. 772)

(15) MC-F-9871, Admiral-Merchants-Control-Jack Cole-Dixie Highway Co. (November 1967) (ERO appendix D, p. 36) (O, p. 777)

(16) MC-F-10107, Jack Cole-Merger-Dixie Highway (October 1968) (O, p. 634)

(17) 109 M. C. C. 76, Consolidated Freight-Control (1969) and MC-42487, Sub 744 (January 1971) (O, p. 759)

(18) MC-F-9822 and MC-35320 (Sub 109), T. I. M. E.-DC (May 1970) (O, p. 762)

(19) 110 M. C. C. 892 (1969), Georgia-Florida-Alabama Transp. Co. Extension (O, p. 774)

(20) MC-41432 (Sub 103), East Texas Motor Freight, Inc. Ext. - Mississippi and Louisiana Points (1971) (O, p. 779)

(21) MC-F-10260 and MC-31389 (Sub 120), McLean Trucking Co. - Purchase - S. Z. Harrison (August 1970) (O, p. 784)

(22) MC-31389 (Sub 121), McLean as substituted applicant for Herrin (March 1970)(O, p. 784)

(23) 112 M. C. C. 558 (1970) Braswell Motor Freight Lines, Inc., Ext., MC-111383 (Sub-No. 17) (July 1971) (O, p. 792)

We have also noted disposition of the ten applications preheard with the ten applications considered in this proceeding, and have noted that a substantial majority of those applications were approved by the Commission. 24/

THE PETITION OF ABF FOR LEAVE TO INTERVENE AND FOR RECONSIDERATION

A brief background of pertinent facts is helpful to place the petition of ABF to intervene in proper perspective. The Bowman application was filed on June 12, 1965. Notice of the application was published in the FR of August 19, 1965. The application was restricted:

> To the transportation of traffic moving from, to or through Birmingham and Mobile, Alabama, Pensacola, Florida, and Memphis, Tennessee.

24/ Braswell Sub-No. 17 granted: C-66 No. 103 granted with conditions; Mercury Freight Subs-No. 11 and 12 granted; Transcon Sub-No. 54 granted; Deaton Sub-No. 232 denied; Gordons Sub-No. 94 and Dixie Ohio Sub-No. 62 - dismissed by applicants.

Route (5) sought authority:

> Between Montgomery, Alabama and junction U.S. Highways 11, 80 and Interstate Highway 59, over U.S. Highway 80, serving all intermediate points.

and Route (6)(a) sought authority:

> Over U.S. Highway 11 (also over Interstate Highway 20) from Birmingham to Meridian, Miss.

> These two routes, (5) and (6)(a), connected at the junction described in Route (5).

At the inception of the consolidated proceedings, ABF protested the applications of Roadway and Bowman. However, prior to the presentation of protestants' evidence in opposition, ABF, as previously noted, withdrew its protest to the Bowman application which was amended to eliminate proposed service to Fort Smith, Arkansas and Oklahoma points.

Throughout the proceeding, Bowman's intention was clearly stated to use the Montgomery gateway and the junction point named in Route (5) for the purpose of joinder only. The Commission Order states that (611-612):

> ". . .although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language."

Pursuant to that Order, notice was republished in the FR of Thursday, February 22, 1972, following which ABF filed a petition to intervene and for rehearing. It is the only plaintiff which did so.

The complaint of ABF involved the acquisition by Bowman of a part of the operating authority of Alabama Highway Express, Inc. (AHE) during pendency of the subject proceedings and the acquisition by ABF of a part of the operating authority of Youngblood Truck Lines in Docket MC-F-11179.

CHRONOLOGY OF PERTINENT DATES

A chronology of pertinent dates is helpful to understanding the issues here involved.

June 12, 1965	-	Bowman application was filed.
August 19, 1965	-	Notice of Bowman application in the Federal Register
September 3, 1965	-	ABF filed protest to the Bowman application
March 29, 1966	-	Bowman amendment, X-46, received (972)
June 15, 1967	-	ABF withdrew its protest to the Bowman application
November 1, 1967	-	Notice of application, Bowman-Purchase(Part) - AHE in FR
August 15, 1968	-	Bowman - Purchase (Part) - AHE consummated with Commission approval
May 19, 1971	-	Application filed, ABF - Control and Merger - Youngblood, MC-F-11179
October 15, 1971	-	ABF-Control and Merger-Youngblood approved by Commission

The Commission noted that Bowman's intent to "use Montgomery as a gateway" was clearly specified throughout the proceedings. Bowman presently holds authority to serve that point. The republication did not add any new points or routes. It simply specified that Montgomery could be used as a gateway and that the junction described in paragraph (5) of the original application could be used for the purpose of joinder only.

During the subject proceeding, Bowman acquired a part of the operating authority of AHE. Notice of this application was published in the FR on November 1, 1967, and, after hearing, with approval of the Commission, was consummated in August 1968. ABF did not protest this application. Approval of this acquisition gave Bowman operating authority between Birmingham, Alabama and points within a radius of 65 miles thereof, on the one hand, and, on the other, points in Indiana, Tennessee, the northwest two-thirds of Ohio and the central one-third of Illinois.

Thereafter, on May 19, 1971, ABF filed an application to merge its authority with that of Youngblood Truck Lines. This application was approved by the Commission on October 15, 1971 in Docket MC-F-11179. The acquisition of Youngblood by ABF extended its operations into North Carolina, South Carolina and Georgia. By reason of the Youngblood acquisition, ABF can transport freight between the named Atlantic Seaboard states, on the one hand, and, on the other, its central freight territory. Additionally, Youngblood can transport freight between its western territory and its central freight territory. In brief, ABF argued that the authority which Bowman acquired from AHE should be restricted in this proceeding. The petition of ABF was referenced as number (6) in the Order of the Commission on rehearing dated September 1, 1972, and was denied by the Commission for the following stated reasons:

> "It is further orderdd, that the petitions in (1), (2), (3), (4), (5), (6), and (7) above collectively seeking leave to intervene, and requesting further hearing and reconsideration be, and they are hereby, denied and rejected, respectively, for the reasons (1) that the publication of the grant of authority in No. MC-94201 (Sub-No. 56) was made for the purpose of apprising the interested persons of the additional authorization to use Montgomery, Ala. as a gateway and to serve a specified point in Alabama for purposes of joinder only, which was not included in the notice of authority sought as originally published in the Federal

Register issue of August 19, 1965; (2) that the petitioners' stated interests in No. MC-94201 (Sub-No. 56) are generally based either (a) on authority in conflict with the services proposed as set forth in the publication as originally made, and petitioners had ample notice and opportunity but failed to file timely protests at the time in the proceeding in which they now assert an interest or, as in the case of petitioner in (6) above, filed a timely protest and later withdrew said protest, (b) on authority acquired by them after the original publication, which authority does not conflict with the additional authorization necessitating republication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, it has not been shown to be prejudiced by the involved portion of the grant requiring republication, or (c) on authority acquired by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) to the extent is authorized service at Montgomery, Ala., and a specified point in Alabama for purpose of joinder only; and (4) that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to the authority acquired by certain of the petitioners subsequent to the original publication, there is no showing that such evidence would warrant a result different than that reached in the report and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purpose of joinder only."

The defendants assert that the Commission was right and the petition of ABF was not well taken. In support, they point to the following facts:

(1) ABF withdrew its protest to the Bowman application. Admittedly, ABF was an original protestant to the Bowman application. It withdrew its protest following completion of shipper testimony with knowledge of the intended use of the Montgomery gateway and joinder of Routes (5) and (6)(a) at the noted junction.

(2) ABF did not protest the Bowman acquisition of AHE. Admittedly, ABF had notice of the Bowman application to purchase AHE and did not file a protest.

Rule 247(d)(2) of the Commission's General Rules of Practice specifically provides that:

> "Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding . . ."

The argument of ABF that the Commission should consider the Bowman application in the light of facts other than those related to Montgomery necessarily is based on a premise that ABF could not have known until the republication that Bowman would be able to tack[25/] the rights granted in this proceeding to the operating authority which Bowman obtained by purchase from AHE in August 1968.[26/]

The language of the Bowman application is not now nor was it at the time of FR publication ever construed by the Commission to be a restriction against tacking with after-acquired authorities. If a restriction had been intended, the notice would have so stated because, with respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co., Extension - Oklahoma, 106 M.C.C. 1, 18 (1967). In Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969), the Commission explained the reason for the policy, 110 M.C.C. at 390-391:

> "The reason for the foregoing is relatively simple. The right of a common carrier to join separate unrestricted grants of authority at a point of service common to both authorities in order to provide a

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25/ "Tacking" means a carrier's ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

26/ Notice of the filing of this application in Docket MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority granted, in the Federal Register on June 19, 1968.

through service does not ordinarily accrue to the carrier on the basis of a finding that the public convenience and necessity require the through service. Rather, it comes into existence as a logical sequence to the fact that if two separate authorities with a common point of service were held by different carriers, such carriers could participate in an interline movement for the provision of a through service. In other words, the right to tack is primarily an extension of interchange concepts and is subject to many of the privileges and obligations which attach to interchange."

Furthermore, the Examiners' Report served November 19, 1969, showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority it shought herein. 27/ In fact, the Examiners' Recommended Report specifically stated on page 25 that:

"NOTE: In August 1968 Bowman acquired a portion of the operating rights of Alabama Highway Express which included among other authority the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. . . . decided July 8, 1968."

Despite having actual notice of Bowman's intent from the date of receipt of the Examiners' Report, ABF did nothing and made no attempt to seek leave to intervene until more than two years had passed. ABF did not protest the purchase application although it was timely and appropriate for ABF to do so if it claimed any adverse effect.

Closely in point is Howard Hall Company, Inc. v. United States, 332 F. Supp. 1079, 1082 (N.D. Ala. 1971), where the court explained:

27/ Examiners' Report, Appendix A, p. 25

> "The case of Warren Transport, Inc., Extension - Dubuque to North Dakota, 98 M.C.C. 761, points out two basic principles concerning the tacking of common carrier authority; First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension Liquid Chemicals, 73 M.C.C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M.C.C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969)."

The FR notice of the subject application and the Bowman purchase of AHE constituted official notice to ABF of Bowman's intention to tack. ABF's 1972 petition for intervention is untenable, and as the United States Supreme Court stated in United States v. Northern Pacific Railway, 288 U.S 490, 53 S. Ct. 406, 77 L. Ed. 914:

> "They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted."

(3) To insert a restriction affecting the rights Bowman acquired from AHE would constitute an unlawful revocation of rights.

Admittedly, there was no restriction proposed in the AHE purchase proceeding and none was imposed. The defendants take the position that to impose such a restriction, at this time, in a separate proceeding, would constitute a revocation of operating rights which could be considered only under Section 212 of the Act "for willful failure" of Bowman to comply

with the Act or lawful regulations promulgated thereunder and following notice, hearing and failure to comply with an order of the Commission directing compliance.

(4) ABF is not authorized to serve any cities in Alabama.

As noted, the republication simply added Montgomery to the restriction in the Bowman application. Admittedly, ABF neither holds nor claims to hold any authority to serve Montgomery or any Alabama points. It could not be prejudiced by the amendment to the restriction in the Bowman application adding Montgomery since it can handle no freight to or from Montgomery and cannot serve the involved junction point.

(5) ABF has failed to exhaust its administrative remedies

The ABF petition for intervention was filed after it had participated throughout the proceeding and after it had withdrawn its protest to the Bowman application. ABF did not file a petition for reconsideration of the order of the Commission dated September 1, 1972 denying its petition for intervention and reconsideration, and it took no further administrative action with respect to that order. In the October 4, 1972 complaint to this Court, plaintiffs alleged, for the first time, that in declining to permit ABF to re-enter and reopen the proceeding, the Commission denied "due process". ABF's failure to seek Commission reconsideration of the Commission order of September 1, 1972 precludes it from raising the issue for the first time before this Court. See the Opinion of Judge Miller of this panel in United States v. Carroll, 203 F. Supp. 423 at 428. Commission Rule 101 provides that:

> "All decisions . . . of a division of the Commission in any proceeding shall be considered administratively final except . . . those wherein the initial decision is made by a division."

The decision denying the petition of ABF to intervene was an intial decision made by the Division. ABF did not file any petition for rehearing of that aspect of the order and thus did not exhaust its administrative remedies.

ABF had knowledge of the proposed unification of Bowman's Sub-No. 56 routes and the AHE routes from the proceedings herein and from two other official sources, (1) the November 1, 1967 FR notice of the Bowman/AHE transaction, and (2) the November 19, 1969 report recommended by the Herrin hearing officers. Notwithstanding this knowledge, ABF took no steps in the period 1967-1972 to oppose the Bowman/AHE acquisition or to re-enter the Bowman Sub-No. 56 case. During that same period ABF acquired Youngblood. Then, when the Herrin case was drawing to a close after almost eight years of I. C. C. handling and under a FR notice in which it had no valid interest, ABF sought to re-enter and reopen this proceeding to evidence the very changes it had for four years silently observed take place.

The Commission justifiably refused the request. As ABF sought no relief relevant to the public notice upon which it purported to act, the Commission validly declined to delay disposition of a proceeding then in its eighth year of processing. Moreover, the relief actually sought by ABF was simply that the I. C. C. rehear the Bowman Sub-No. 56 case in light of Bowman's 1968 acquisition of AHE and ABF's 1971 acquisition of Youngblood. But the Herrin hearing officers had noted and the agency's decision had given effect to the Bowman/AHE purchase. ABF itself was responsible for the lack of notoriety regarding the ABF/Youngblood purchase and, in any event, that purchase has no relevancy to the Bowman award at Montgomery, Ala.

Requests for rehearing in administrative proceedings are not a matter of right, but a plea to discretion; and the discretion to be invoked is that of the body making the order and not the reviewing body. United

States v. Interstate Commerce Commission, 396 U.S. 491, 90 S. Ct. 708, 24 L. Ed. 2d 700 (1970); Watkins Motor Lines, Inc. v. United States, 243 F. Supp. 436 (D. Neb. 1965); Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp. 894 (D. Colo. 1963). A denial of further hearing is not open to attack unless in "clear abuse" of discretionary authority. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821 (1946).

THE ISSUE OF ECONOMIC MUTUAL EXCLUSIVITY

On August 18, 1972, eight months after the Division Order, a group of the protestants filed a petition under Commission Rule 102 seeking to consolidate all of the applications in the subject proceeding with those in two other unrelated proceedings, East Texas Motor Freight (Sub-No. 103) and Bell Transfer (Sub-No. 6). In that petition, they raised, for the first time, an issue of economic mutual exclusivity, claiming that it is a natural extension of the doctrine articulated by the Supreme Court in Ashbacker Radio Corp. v. F. C. C., 326 U.S. 327 (1946). The Commission denied the petition for the following reasons:

1. The petition failed to meet the condition for filing under Rule 102 which requires that:

> "When the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief. . . and stating the reasons therefor may be served and filed."

The relief sought in the petition is covered by Rule 101 of the Rules of Practice. The petition did not meet the requirements of Rule 101 because the ETMF (Sub-No. 103) proceeding was administratively final when the petition was filed and Subsections (f) and (g) of Rule 101 enunciate Commission policy against entertaining successive petitions by the same parties upon substantially the same grounds as a former petition which has been

considered and denied.

2. The applications of ETMF and Bell were filed one and two years, respectively, after oral hearings in the subject proceedings had been concluded and after the submission of original briefs.

3. The petitioners remained silent throughout the ETMF and Bell proceedings, speculating on the action of the Commission.

4. The subject applications embrace proposed services substantially different in territorial scope from the services proposed by ETMF and Bell.

Research has not disclosed a single case extending the Ashbacker doctrine to motor carrier operating rights proceedings. To the contrary, in Texas-Oklahoma Express, Inc., Ext. -Oklahoma Points, 110 M. C. C. 769, 773 (1969), the Commission declared that the Ashbacker doctrine does not ordinarily extend to such proceedings:

> "Applications for motor carrier operating rights ordinarily do not fall within the ambit of the doctrine established in Ashbacker Radio Corp. v. F. C. C., 326 U.S. 327 (1945), which dictates that, for procedural due process, contemporaneously filed conflicting applications before an administrative agency, such as applications for a radio station license before the Federal Communications Commission, must be consolidated for concurrent decision where the applications are for mutually exclusive authority. Applications for the same motor carrier operating rights, unlike applications for the same radio station license, are seldom mutually exclusive since the Commission may grant authority to any number of carriers to perform the same service, provided that a public need is shown therefor. See Great Western Packers Exp. v. U.S. and I. C. C., 263 F. Supp. 347 (D. Colo. 1966). The Commission's right to consider an application separately or in combination with other applications is a well established matter of administrative discretion, and the Commission's decision in this respect is based upon the concept of fairness of opportunity to all parties involved, the effective procedures of the Commission, and the public interest. Alterman Transport Lines, Inc., Ext. -

Hastings, Nebr., 94 M.C.C. 421, 423."

In Great Western Packers Express, Inc. v. United States, 263 F. Supp. 347, 350 (D. Colo. 1966), the Court concluded that it would be "stretching" the Ashbacker doctrine to apply it to the motor carrier applications involved, stating:

> "Clearly this is not a facility which can be granted to only one. Numerous truck lines operate economically in the same areas and in this instance each of the individuals has its own particular following in its individual area of influence. Moreover, the services to be rendered are not identical, nor are the cities or states sought to be served identical. Watkins and Curtis sought authority in several states. Furthermore, the Commission granted different authority to Curtis and Watkins from that granted to Digby."

Assuming, arguendo, that the applications were identical and one would be mutually exclusive of the other (which is exactly contrary to the facts), Ashbacker would not apply since the "cutoff date" recognized in Century Broadcasting Corp. v. F.C.C., 310 F.2d 864, has long since passed. In fact, any Ashbacker requirement for consolidation was met and fully satisfied when the ten applications involved in the subject proceeding were, in fact, consolidated.

Applications under Section 207 of the Interstate Commerce Act are not mutually exclusive since the Commission may grant authority to any number of carriers to perform service over any number of routes traversing the same and different cities, provided that a public need is shown therefor.

THE PRIMARY CONSIDERATION OF THE COMMISSION

In Central Motor Lines, Inc. v. United States, 309 F. Supp. 336 (W.D.N.C. 1969), the Court considered facts analogous to this proceeding. There, the Court stated:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if

> the Commission's decision has a rational basis, rather than to second guess the Commission itself. The primary consideration is the interest of the public - not the relative economic advantage of competing carriers."

The Court noted that the primary question before the Court was whether the decision of the Commission is:

> ". . . supported by substantial evidence on the record considered as a whole . . . free from errors of law . . . and . . . not so arbitrary or capricious as to constitute an abuse of discretion."

and that:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if the Commission's decision has a rational basis, rather than to second guess the wisdom of the Commission itself."

In Carolina Freight Carriers v. United States, 297 F. Supp 848 (1969), the plaintiff sought to set aside an order of the Commission granting a certificate to Alterman Transport Lines, Inc. to transport general commodities, with usual exceptions, between Charlotte, N. C. and Florida. The Court affirmed the Commission, noting:

> "The question before the three judge court is whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a view of the record as a whole."

and stated that:

> "If public convenience and necessity are found by the Commission to justify more and more alert competition (which on the record is clearly shown by substantial evidence) it is not grounds for objection that some of the protesting carriers might lose revenue."

In Superior Trucking Company v. United States, 306 F. Supp. 872 (N. D. Ga. 1969), another court held that loss of profits to existing carriers was no justification for denying the introduction of superior, competing service. The Court stated:

> ". . . The implementation of a new common carrier service may well inject an additional

> competitive element into plaintiffs' business, but this in itself affords no grounds for refusal to grant the certificate or it would be difficult to ever secure a certificate for new service."

Our attention has not been directed to any finding of fact that does not have substantial support in the record. Rather, the principal thrust of plaintiffs' argument is that greater weight should have been given to some of the testimony and exhibits and less weight to some of the testimony and exhibits of applicants and shippers, and that overall they have been rendering a satisfactory service between the involved areas. As we have noted, the weight to be given the evidence is a matter principally for the Commission absent arbitrary action which is not reflected in this record. The second argument, if established, is not a bar to Commission approval of additional authority. In a recent case involving some of the parties to this proceeding, the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, at 411-412 (1967), stated:

> "The Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service."

FINDINGS OF FACT

On the basis of the record certified to this Court and following detailed briefs and argument, this Court finds that:

1. The Orders of the Interstate Commerce Commission in Bowman Transportation, Inc., Extension - Dallas, Texas, MC-94201 (Sub-No. 56); Johnson Motor Lines, Extension - Dallas, Texas, MC-106401 (Sub-No. 18) and Red Ball Motor Freight, Inc., Extension - Atlanta, Georgia, MC-22229 (Sub-No. 132), served January 24, 1972 and September 1, 1972 are supported by substantial evidence.

2. The findings of the I.C.C. in the cases cited in paragraph 1

above that present and future public convenience and necessity require operation by these carriers, to the extent approved, is supported by substantial evidence.

3. The weight to be given to transit time studies of applicants, shippers and protestants was for the Commission, absent arbitrary action not here present.

4. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the subject proceeding.

5. The plaintiffs have not been denied due process nor have they suffered any prejudice by intervention of the 41 shippers, Lorch-Westway Corporation, et al.

6. The Orders of the Commission served January 24, 1972 and September 1, 1972 are due to be affirmed.

And the Court makes and applies the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue of this action pursuant to 28 U.S.C.A., Sections 1336, 1398, 2321, 2325 and 2284.

2. The finding of the Commission under 49 U.S.C.A. Section 307 that the present and future public convenience and necessity require approval of the applications of Bowman Transportation, Inc., Johnson Motor Lines, Inc. and Red Ball Motor Freight, Inc. to the extent granted are supported by substantial evidence.

3. The Orders of the Commission served January 24, 1972 and September 1, 1972 were not arbitrary, capricious or an abuse of discretion.

4. The Orders of the Commission in this proceeding served January 24, 1972 and dated September 1, 1972 satisfy the requirements of 49 U.S.C.A. Section 307 and the Administrative Procedure Act.

5. The Commission applied the proper standards to the evidence of record and adequately explained the basis for its decision.

6. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the proceeding.

7. Plaintiffs have not been denied due process nor have they suffered prejudice by intervention of the 41 shippers allowed by the Commission and this Court.

8. The Orders of the Commission served January 24, 1972 and served September 1, 1972 in this proceeding are due to be affirmed.

9. The weight to be given transit time studies of applicants, shipper witnesses and protestants, absent arbitrary action not here found, was for the Commission and its findings with respect thereto where supported by substantial evidence.

WHEREFORE, an order is being entered today dismissing the complaint of plaintiffs and vacating the temporary restraining order.

SO ORDERED. This ____ day of , 1973.

APPENDIX I

Plaintiff's Proposed Findings of Fact and Conclusions of Law served August 16, 1973

IN THE

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

CIVIL ACTION

No. FS 72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., MERCURY MOTORS, INCORPORATED, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC., — PLAINTIFFS,

ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC. OF MISSISSIPPI and JACK COLE-DIXIE HIGHWAY COMPANY, — INTERVENING PLAINTIFFS,

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, — DEFENDANTS,

JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., BOWMAN TRANSPORTATION COMPANY and LORCH-WESTWAY CORPORATION, et al., — INTERVENING DEFENDANTS.

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs and intervening plaintiffs respectfully submit that the Court should adopt the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. NATURE OF PROCEEDING.

1. This is an action to set aside orders of the Interstate Commerce Commission, issued in accordance with its decision in Herrin Transportation Company, Extension - Atlanta, Ga., 114 M.C.C. 571 (decided Dec. 30, 1971) granting extensions of operating authority to three motor common carriers, Red Ball Motor Freight, Inc. [Red Ball], Bowman Transportation, Inc. [Bowman], and Johnson Motor Lines, Inc. [Johnson]. The authority granted authorized such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specified points, generally in the Southeastern and Southwestern portion of the United States. The proceeding is brought pursuant to 28 U.S.C. §§ 1336, 1398, 2284, 2321-25.

B. PARTIES.

2. Each plaintiff and intervening plaintiff is a motor common carrier that participated in the proceeding before the Interstate Commerce Commission as a protestant in opposition to one or more of the applications granted by the Commission. Two of the plaintiffs, namely, Arkansas Best Freight System, Inc. [ABF] and Mercury Motors, Incorporated [Mercury], maintain their principal offices and places of business within the Western District of Arkansas, Fort Smith Division.

3. The action was brought against the United States, pursuant to 28 U.S.C. § 2322. The Interstate Commerce Commission was also named as a defendant. 28 U.S.C. § 2323.

4. The successful applicants before the Commission, Red Ball, Bowman and Johnson, intervened as defendants. Also intervening as defendants in support of Johnson were a group of shippers that had appeared as witnesses before the Commission on behalf of the Johnson

application and who, subsequently, were permitted by the Commission to intervene in support of that application. The interventions here were pursuant to 28 U.S.C. § 2323.

C. PRELIMINARY MATTERS.

5. Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

6. After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., [Jones], on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before this Court.

D. PROCEEDINGS BEFORE THE COMMISSION.

7. In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the

applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

8. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D. C., Atlanta, Ga., Dallas and Houston, Tex., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

9. A total of 66 rail and motor carriers entered appearances

in opposition to the applications. Forty-eight of the protestants offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969 - twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

13. Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14. Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15. Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of ABF and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension - Atlanta, Ga., supra.

16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration,

whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

C. THE EXAMINERS' REPORT.

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communties along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal. A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points,

particularly the more distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

20. Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive

clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p. 6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their

delivery requirements." The Examiners considered significant the fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

". . . Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were - - selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportion service by protestants, applicants, as well as other carriers. They also reflect instances of good service.

. . .

"The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the

Commission, however, the Examiners noted that:

> "Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies . . . must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals

would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly sele "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that a diver of traffic from such major points "will result in a deterioration of service at many of the smaller points . . . which are not propo to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbala and that approval of the applications would aggravate this situati to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operatio now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffice from the Texas origins or connecting points will result in greater imbalanc (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributa to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

"The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).

". . . remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31)

". . . the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

D. THE EXCEPTIONS.

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

E. THE DIVISION REPORT.

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of the supporting witnesses' needs in these proceedings . . . can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36. It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings . . . of the Hearing Officers . . . but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson Brief, p. 21; Government Brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the

report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37. The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

38. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2) (A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of

testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

41. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriatness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have

disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42. The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments,

and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in an appendix; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took

official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however, the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

46. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering

the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here proposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers."

Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

48. As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49. In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50. The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [44 In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such

grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co.--Ext.--Lake Mills, Wis., 111 M.C.C. 425 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611.

51. The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52. The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53. The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

F. OTHER MATTERS.

54. Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55. The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested

parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier ~~can~~ normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating ". . . with that authority previously granted . . . wherein applicant is authorized to serve points in . . ." and named sixteen (16) states and the District of Columbia. The states of Illinois, Indiana and Ohio were not named in the Federal Register Publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the

authority sought in the present proceeding to authority subsequently acquired. Subsequent to the publishing of the "Notice", Bowman acquired Alabama Highway Express which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the Alabama Highway Express purchase and that acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register Publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed. 2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This Court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States (1966) 256 F.Supp. 257, 264; Reddish v. United States (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed. 2d 147. As this Court stated in Patterson v. United States (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing Court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States (Del. 1969) 301 F.Supp. 310, 319, "in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed. 2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed. 2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States (Mo. 1964) 231 F.Supp. 968, 970.

4. In Overton Park, supra, the Court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The Court cited L. Jaffe, Judicial Control of Administrative Action (1965).

Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> ". . . Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work. . . ."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added). This terminology, and the above authorities, clear recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the Court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party . . . ." 5 U.S.C. § 706. Although some question concerning the Court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

". . . This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear. . . ." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this Court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The Court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Examiners' report as well as to the findings embodied in the Division's report, as we are required to do under Universal Camera Corp., supra.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this Court to confine its review to a determination of the substantiality of such portions of the

evidence. The Court rejects this suggestion. Our duty is to review "the record in its entirety . . . including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U. S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States (W.D. Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925 (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board (1 Cir. 1964 , 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by

protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C., at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." Mary Carter Paint Co. v. F.T.C. (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the Court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U. S. Sup. Ct. Oct. 24, 1972. In its first decision the Court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged. . . . and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D. Pa. 1954)."

In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no countervailing evidence" as to their representativeness. This Court agrees with the Court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R. R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The Court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were

made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La. (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo. (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers

would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the Court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The Court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The Court relied upon Eastern and Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the Court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the Court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the Court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta (1966) 100 M.C.C. 482, but in that case the Commission found that:

> ". . . most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that

reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the Court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record would have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the orders of the Interstate Commerce Commission issued in Docket No. MC-1124 (Sub No. 206), styled Herrin Transportation Company Extension - Atlanta, Ga., to the extent that they authorize the

issuance of certificates of public convenience and necessity to Red Ball Motor Freight, Inc., Bowman Transportation Company and Johnson Motor Lines, Inc., be, and are hereby, set aside and declared to be void.

APPENDIX J

Order and Judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, in Arkansas-Best Freight System, Inc., et al v. United States of America and Interstate Commerce Commission and Red Ball Motor Freight, Inc., et al, entered September 11, 1973.

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., An Arkansas Corporation, MERCURY MOTORS, INC., an Arkansas Corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,	)	
Plaintiffs,	)	
ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,	)	
Intervening Plaintiffs,	)	
v.	)	NO. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)	
Defendants,	)	
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,	)	
Intervening Defendants.	)	

J U D G M E N T

On this 11th day of September, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity.

R. A. Schaff
United States Circuit Judge

John E. Miller
U. S. Senior District Judge

Paul X. Williams
United States District Judge

U. S. District Court
Western Dist. Arkansas
FILED
SEP 11 1973
Riddle, Clerk
Marguerite Weisser
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
SEP 11 1973
E. A. [illegible], Clerk
By [illegible]
Deputy Clerk

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ET&WNC TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

No. FS-72-C-65

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

JOHN E. MILLER, Senior District Judge

The plaintiffs, 19 in number, bring this action to set aside, vacate, suspend, enjoin and annul that portion of the order of the Interstate Commerce Commission (ICC) that authorizes the issuance of a Certificate of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132), to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56), and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18) (hereinafter referred to as Red Ball, Bowman and Johnson, respectively, or applicants collectively). The applications were consolidated with others under Docket No. MC-1124 (Sub-No.206) which was initially entitled "Herrin Transportation Company, Extension-Atlanta, Ga.," and was re-entitled "McLean Trucking Company, Extension-Atlanta,Ga."

This action was commenced pursuant to 28 U.S.C.A. § 1336, conferring jurisdiction upon this court, and §§ 2284 and 2321 through 2325, inclusive, of said Title, together with 49 U.S.C.A. §§ 305(g), 305(h), and 5 U.S.C.A. §§ 701 through 706, the Administrative Procedure Act, all providing for the procedure herein.

Venue exists under 28 U.S.C.A. § 1938, since plaintiffs Ark ansas-Best Freight System, Inc., and Mercury Motors, Inc., are residents of and maintain their principal offices and places of business in Fort Smith, Arkansas.

On October 12, 1972, Red Ball, upon motion was allowed to intervene as a party defendant, and on October 12 it filed its original answer, and on December 4, 1972, filed its first amended answer. In the first amended answer, it alleged that the Commission entered an order on October 6, 1972, denying the petitionsof plaintiffs seeking a finding that an issue of general transportation importance is involved in the proceeding.

On October 12, 1972, the court, upon motion, allowed Johnson to intervene as a defendant, and on the same day it filed its answer in which it denied that certain of the plaintiffs had appeared as protestants in opposition to the granting of the operating authority applied for by it.

On October 25, 1972, Bowman, upon motion, was allowed to intervene as a defendant, and on the same date it filed its answer, in which it alleged that certain of the plaintiffs did not file a petition for reconsideration in the proceedings.

On October 31, 1972, the court, upon motion, granted Roadway Express, Inc., and Roadway Express, Inc., of Mississippi permission for leave to intervene as plaintiffs.

On November 1, 1972, the court allowed a group of shippers, 41 in number, who had appeared as witnesses before the Commission on behalf of the Johnson application, to intervene in support of the application.

On December 4, 1972, defendants USA and ICC filed their joint answer.

On January 2, 1973, the court, upon motion, granted Jack Cole-Dixie Highway Company leave to intervene in support of the plaintiffs' complaint.

The authority granted Red Ball, Bowman and Johnson authorizes such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specific points, generally in the Southeastern and Southwestern portions of the United States. Each plaintiff and intervening plaintiff is a motor carrier that participated in the proceedings before the Commission as a protestant in opposition to one or more of the applications granted by the Commission.

Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C.A. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension-Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before the court. (Appendix A.)

In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met

by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

8. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D.C., Atlanta, Ga., Dallas and Houston, Texas., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

9. A total of 66 rail and motor carriers entered appearances in opposition to the applications. Forty-eight of the protestants

offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969, twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

13 Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14 Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15 Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of Arkansas-Best Freight and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension-Atlanta, Ga., supra.

16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration, whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth.

C. THE EXAMINERS' REPORT

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' Report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between

points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communities along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal.

A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points, particularly the most distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p.6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their delivery requirements." The Examiners considered significant the

fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving

overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

> " * * * Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportation service by protestants, applicants, as well as other carriers. They also reflect instances of good service.
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> * * * *
>
> "The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to

them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the Commission, however, the Examiners noted that:

> "Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 17

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies * * * must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points * * * which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas

eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

> "The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).
>
> " * * * remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31).
>
> " * * * the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the

carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

D. THE EXCEPTIONS

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

E. THE DIVISION REPORT

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of

the supporting witnesses' needs in these proceedings * * * can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36 It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings * * * of the Hearing Officers * * * but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson brief, p. 21; Government brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37 The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this

issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

38. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of

testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

4. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of

such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42 The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's

on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating

tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however,

the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

76. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and

Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here proposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers." Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

48. As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration

of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49 In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50 The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [[44]In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co. Ext.--Lake Mills, Wis., 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweight any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611."

51 The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52 The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53 The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

F. OTHER MATTERS

54 Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55 The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests

in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating " * * * with that authority previously granted * * * wherein applicant is authorized to serve points in * * *" and named sixteen (16) states and the District of Columbia. The States of Illinois, Indiana and Ohio were not named in the Federal Register publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the authority sought in the present proceedings to authority subsequently acquired. Subsequent to the publishing of the "Notice," Bowman acquired Alabama Highway Express

which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

CONCLUSIONS OF LAW

1. This court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence.

Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, (1966) 256 F.Supp. 257, 264; Reddish v. United States, (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed.2d 147. As this court stated in Patterson v. United States, (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C.W.D. Mo. 1955, 134 F.Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States, (Del. 1969) 301 F.Supp. 310, 319, "in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed.2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States, (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed.2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States, (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc.v. United States, (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States, (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States, (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States, (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States, (Mo. 1964) 231 F.Supp. 968,970.

4. In Overton Park, supra, the court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The court cited L. Jaffe, Judicial Control of Administrative Action (1965). Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> "* * * Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work."

In Burlington Truck Lines, Inc., v. United States, (1962) 371 U.S. 156, 83 S.Ct.239, 9 L.Ed.2d 207, the court at page 245 of 83 S.Ct. said:

> "Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884, 72 S.Ct. 152, 153, 96 L.Ed. 662 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' Federal Communications Comm'n v. RCA Communications, Inc., 346 U.S.86, 90, 73 S.Ct. 998, 1002, 97 L.Ed.1470. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare id., at 91, 73 S.Ct. at 1002, 97 L.Ed. 1470. And for the courts to determine whether the agency has done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. Interstate Commerce Comm'n v. J-T Transport Co., 368 U.S. 81, 93, 82 S.Ct. 204, 211, 7 L.Ed.2d 147; United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 488-489, 62 S.Ct. 722, 729, 86 L.Ed. 971; United States v. Chicago, M., St.P. & P.R. Co., 294 U.S. 499, 511, 55 S.Ct. 462, 79 L.Ed. 1023."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (Emphasis added.) This terminology and the above authorities clearly recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party * * *." 5 U.S.C. § 706. Although some question concerning the court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

> " * * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any

party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Division's report as well as to the findings embodied in the Division's report. This procedure was fully discussed in Universal Camera Corp., supra, where the court at page 496 of 340 U.S. said:

> "We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other facts which in sum determine whether evidence is 'substantial.'"

See, also, Bituminous Material & Supply Co. v. N.L.R.B., (8 Cir. 1960) 281 F.2d 365.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this court to confine its review to a determination of the substantiality of such portions of the

evidence. The court rejects this suggestion. Our duty is to review "the record in its entirety * * * including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U.S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States, (W.D.Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925, (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board,

(1 Cir. 1964) 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes aribtrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified

shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case. Mary Carter Paint Co. v. F.T.C., (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States, (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were

entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States, (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U.S. Sup. Ct. Oct. 24, 1972. In its first decision the court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged * * * and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D.Pa. 1954)."

In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R.R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal

described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to

protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La., (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo., (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta andBaton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision.

West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States, (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by

protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The court relied upon Eastern and Nashua Motor Express, Inc. v. United States, (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta, (1966) 100 M.C.C. 482, but in that case the Commission found that:

> " * * * most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States, (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419,81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman

application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the

Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

Judgment is being entered today permanently suspending, annulling and setting aside the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); declaring said orders to be void; and permanently restraining and enjoining the Commission from issuing said Certificates of Public Convenience and Necessity.

This ___ day of September, 1973.

Pat Mehaffy
United States Circuit Judge

JNO. E. MILLER
U. S. Senior District Judge

PAUL X. WILLIAMS
United States District Judge

APPENDIX A

Status of Jones Truck Lines, Inc.

Jones Truck Lines, Inc. (Jones), MC-111231 (Sub-No. 67) filed on June 14, 1965, its application for extension of its present authority (1) between Atlanta, Ga., and Texarkana, Ark., (and intermediate points between Birmingham and Greenville, Miss., and on U.S. 82 in Arkansas); (2) between Texarkana, Ark., and Sherman, Texas, (and all intermediate points); (3) between Birmingham, Ala., and Memphis, Tenn., (no intermediate points); and (4) between Texarkana, Ark., and Dallas, Texas (all intermediate points). Service was restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone, but not on traffic moving through Memphis and its commercial zone on the one hand, and on the other, points east of the Mississippi River.

Throughout the hearings in the consolidated applications, Herrin Transportation Co., MC-1124 (Sub-No. 206), Jones, Bowman and Johnson were commonly referred to as "The Trinity," and filed with the court a joint abstract of the evidence in behalf of "The Trinity," containing seven large volumes. The application was submitted to the Hearing Examiners along with the other nine applications, and all were denied on the ground that the applicants had failed to establish that the present or future public convenience and necessity require the operations proposed in their respective applications.

In reviewing the report and recommendations of the Hearing Examiners, served Nov. 19, 1969, Division 1 at page 601 of Exhibit 1 to the original complaint, stated: "(c) there is not, in our opinion, sufficient traffic to sustain all of the additional

motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest."

In its findings of fact the Commission at page 612 found that Jones, along with other applicants, had failed to establish the present and future public convenience and necessity, and that the applications should be denied. Accordingly, on December 30, 1971, the Commission granted only the applications of Red Ball, Bowman and Johnson, and denied all others.

Jones petitioned the Commission to reopen the hearing, and on September 6, 1972, the petition was granted and the application reopened for further hearing. In the petition Jones contended that there is a need for some additional services and that the volume of traffic shown to be moving would not sustain the added services and operations proposed by eight applicants; that Jones' application should be granted either in addition to those granted, or in lieu of the grant of authority to Red Ball; that that in choosing Red Ball over Jones, the Commission failed to appreciate that the two carriers served different areas; that Jones received more support from connecting carriers than any of the other applicants; that only nine carriers remain as active protestants to the Jones application, and that these are nine of the largest carriers in the United States, and therefore a grant of authority to Jones would not materially affect their operations, and that the grants to Red Ball, Bowman and Johnson without a grant to Jones "strikes a death blow to one of the oldest carriers in the Midwest Central South."

A number of protestants replied to Jones' petition, and charged that the thrust of Jones' petition is that a grant of its application should be based upon the number of witnesses produced rather than upon probative evidence of public need or adequacy of existing service.

Upon the reconsideration, the Commission on December 6, 1972, decided that its order of December 30, 1971, denying the application should be set aside and Jones should be granted authority with certain restrictions.

It is interesting to note that according to Exhibit 1 to the original complaint, Division 1 of the Commission was composed of Commissioners Murphy, Deason and Gresham. Division 1, acting as an Appellate Division, on the date the former report and order were considered, was composed of Commissioners Murphy, Hardin and Gresham. The order of December 6, 1972, reveals that Commissioner Hardin dissented. In his dissent he stated:

> "Commencing with my initial review of the record in the consolidated Herrin case, which review occurred prior to the entry of the September 1, 1972, order [the order in which an Appellate Division denied and disposed of certain pleadings as therein set forth] referred to in footnote 5 to the majority report, I became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications. Therefore, I did not approve the September 1, 1972, order. Further, I did not approve the entry of the October 2, 1972, order, also referred to in footnote 5, wherein a majority of the Commission determined that this massive consolidated proceeding involving 'what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission,' did not involve issues of general transportation importance.
>
> "I remain of the opinion that the applications of Red Ball, Bowman, and Johnson granted in the Herrin case should be denied. Most certainly, the record will not support the grant of any authority to Jones. Accordingly, I dissent."

On June 29, 1973, the plaintiffs filed their motion in this court for leave to serve and file a supplemental complaint pursuant to Rule 15(d), Fed.R.Civ.P. In the motion plaintiffs referred to the allegations contained in their original complaint filed October 5, 1972, and the prayers for relief contained therein; that subsequent to the filing of the original complaint, the ICC had caused to be issued three additional orders which affect and are material to the issues in this cause. The purpose of the supplemental complaint was to bring before the court for review the subsequent orders and reports issued by the Commission, and for the same relief against the defendants as prayed for in the original complaint, and seeks to set aside, vacate, suspend, enjoin and annul those orders subsequently entered in Docket No. MC-111231 (Sub-No. 67) that would authorize the issuance of an additional Certificate of Public Convenience and Necessity as described therein. A copy of the proposed supplemental complaint was attached to the motion, which contains various allegations and plaintiffs' contentions, and prays that the court issue a temporary restraining order to remain in force and effect until a hearing and determination by the court, and to prevent the report and orders of the Commission from becoming final and effective; to prevent the Commission from issuance of a Certificate of Public Convenience and Necessity to Jones, and that upon a final hearing and determination of the action, that the Commission be permanently enjoined and prohibited from issuing of the Certificates to successful applicants, or in the alternative, that the matter be remanded to the Commission for appropriate action under the applicable facts and law.

On the same day the motion was filed, the court ordered that a full hearing on the motion and other incidental questions that may arise therein or therefrom be held at Fort Smith, Ark., beginning at 10:00 a.m. on Tuesday, July 24, 1973. On July 16, 1973, a motion of intervening defendant Jones was filed to dissolve the temporary restraining order; to convene a three-judge court to hear and determine plaintiffs application for preliminary injunction and motion to file supplemental complaint.

On July 19, 1973, Daisy Manufacturing Company and 69 others filed a motion to intervene as defendants, and if allowed to intervene, to oppose the motion to file supplemental complaint, and if supplemental complaint is allowed to be filed, that they be allowed to file a motion to dismiss the complaint, and to intervene to oppose granting of any temporary restraining order against the issuance of the Jones certificate, and if the court allows the filing of the supplemental complaint and they do not prevail upon their motion to dismiss, that they be allowed to file answer.

On July 23, 1973, Johnson also filed a pleading termed "Opposition to Plaintiffs' Motion to File Supplemental Complaint." On the same date, Red Ball filed its motion to dissolve the temporary restraining order entered November 7, 1972 (350 F.Supp. 545) and to grant plaintiffs' application for preliminary injunction and to dismiss the motion to file supplemental complaint.

Early on the day of the hearing, July 24, Bowman filed its objections to the motion of plaintiffs to file a supplemental complaint.

All of the motions and objections were argued orally by the attorneys for the various parties, and were submitted "upon the complete record heretofore filed in this case, together with

all exhibits, briefs and arguments of counsel for the various parties." At the conclusion of the hearing the court entered an order denying the motion without prejudice.

Following the overruling of the motion of plaintiffs to file supplemental complaint, the attorney for Jones was allowed to and did withdraw all motions filed by intervenor Daisy Manufacturing Company.

APPENDIX K

Motion of the United States of America and the Interstate Commerce Commission for Amendment of Judgment and Memorandum in Support thereof filed September 17, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,	)	
Plaintiffs,	)	
v.	)	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION	)	
Defendants,	)	Civil Action No. FS-72-C-65
and	)	
RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR FREIGHT INC., and BOWMAN TRANSPORTATION INC.,	)	
Intervening Defendants.	)	

MOTION OF THE UNITED STATES OF AMERICA AND
THE INTERSTATE COMMERCE COMMISSION
FOR AMENDMENT OF JUDGMENT

Pursuant to Rule 59 of the Federal Rules of Civil procedure, the United States of America and the Interstate Commerce Commission move that the judgment, entered in this action on September 11, 1973, which sets aside orders of the Interstate Commerce Commission and, instead of remanding the proceeding, permanently enjoins the issuance of certificates of public convenience and necessity, be amended for the reason that such form of judgment is a matter beyond the jurisdiction of the Court in the circumstances presented.

The basis for this Motion is more fully explained in the Memorandum attached

Respectfully submitted,

THOMAS E. KAUPER
Assistant Attorney General

HOWARD E. SHAPIRO
Attorney
Department of Justice
Washington, D.C. 20530

ROBERT B. JOHNSON
United States Attorney
Fort Smith, Arkansas

Attorneys for the United States of America

ARTHUR J. CERRA
Acting General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of September, 1973 I served true copies of the foregoing Motion Of The United States Of America And The Interstate Commerce Commission For Amendment Of Judgment on counsel for all parties of record by first-class airmail, postage prepaid.

SEYMOUR GLANZER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION
Defendants,

and

RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and BOWMAN TRANSPORTATION INC.,
Intervening Defendants,

Civil Action No.
FS-72-C-65

MEMORANDUM OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION IN SUPPORT OF THE MOTION FOR AMENDMENT OF JUDGMENT

This case involves the validity of orders of the Interstate Commerce Commission which authorized the issuance of three certificates of public convenience and necessity. The judgment of this Court, entered September 11, 1973, in accordance with its opinion of September 11, 1973, provides that, "the orders of the Interstate Commerce Commission . . . be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of Public Convenience and Necessity." We respectfully submit that, insofar as the judgment permanently enjoins the issuance of the certificates, it is beyond the power of the Court.

In its opinion, the Court explained its basis for not remanding the proceeding for further consideration by the Commission at Paragraph 29 of the Conclusions of Law. That paragraph reads as follows:

> There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity". For this reason and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

We respectfully submit that it is beyond the province of the Court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity. Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., 379 U.S. 642, 543 (1965); United States v. Sasketchewan Minerals, 385 U.S. 94, 95 (1966).

The Supreme Court succinctly explained the "guiding principle" which governs judicial review of agency proceedings in Federal Power Commission v. Idaho Power Co., 344 U.S. 17, 20 (1952):

> the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration.

This precept fits this case-for it is well established that the legislative delegation to decide the issue of public convenience and necessity affords "administrative discretion to the Commission to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945).

The present case is like Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., supra. There, too, the District Court had "set aside and permanently enjoined the operation, enforcement and execution" of a Commission order. The Supreme Court summarily vacated the judgment of the District Court

with instructions to the District Court to remand the case to the Commission for reconsideration in the light of the District Court determination.

We respectfully submit that under the "guiding principle" of the above cited cases, the judgment of this Court usurps the exercise of an essentially administrative function and thereby exceeds the authority of a reviewing Court. We suggest that the opinion be modified and the judgment be amended, substantially, as follows:

> The matter is remanded to the Commission for further proceedings consistent with this opinion.

Respectfully submitted,

THOMAS E. KAUPER
Assistant Attorney General

HOWARD E. SHAPIRO
Attorney
Department of Justice
Washington, D.C. 20530

ROBERT E. JOHNSON
United States Attorney
Fort Smith, Arkansas

Attorneys for the United States of America

ARTHUR J. CERRA
Acting General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 2423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of September, 1973 I served true copies of the foregoing Memorandum Of The United States Of America And The Interstate Commerce Commission In Support Of The Motion For Amendment Of Judgment on counsel for all parties of record by first-class airmail, postage prepaid

SEYMOUR GLANZER

APPENDIX L

Notice of Appeal to the Supreme Court of the United States filed by Johnson Motor Lines, Inc. on September 27, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

U. S. District Court
SEP 27 1973
Deputy Clerk

CIVIL ACTION NO. FS-72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

V.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC., and
LORCH-WESTWAY CORP., et al.,

Intervening Defendants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Johnson Motor Lines, Inc., the intervening defendant named above, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on September 11, 1973.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully,

Donald E. Cross
918 - 16th Street, N.W.
Washington, D. C. 20006

Robert L. Jones, Jr.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Counsel for Intervening Defendant
Johnson Motor Lines, Inc.

Of Counsel:

Rea, Cross & Knebel
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

Jones, Gilbreath & Jones
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

APPENDIX M

Notices of Appeal to the Supreme Court of the United States filed by Bowman Transportation, Inc. on October 2, 1973, from the Order entered on September 11, 1973, and on October 19, 1973, from the Orders entered on September 11, 1973 and October 4, 1973, separately and severally.

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., PLAINTIFF, -v- UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al., Intervening Defendants.	CIVIL ACTION NO. FS-72-C-65

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973, and October 4, 1973, separately and severally.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D.C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D.C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D.C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D.C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, TExas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 17th day of October, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al, Plaintiffs, -v- UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al, Intervening Defendants.	CIVIL ACTION NO. FS-72-C-65

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Order entered in this cause by the Three-Judge District Court on September 11, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-03 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D. C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 30th day of September, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public

APPENDIX N

Order and Opinion of the United States District Court for the Western District of Arkansas, Fort Smith Division, filed October 4, 1973, overruling and denying the Motion of the United States and Interstate Commerce Commission for amendment of the judgment entered on September 11, 1973.

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

File

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, MERCURY MOTORS, INC., an Arkansas corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,	)
Plaintiffs,	)
ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,	)
Intervening Plaintiffs,	)
v.	) No. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)
Defendants,	)
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,	)
Intervening Defendants.	)

ORDER

On this 4th day of October, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the motion of the United States and the Interstate Commerce Commission filed September 17, 1973, for amendment of the judgment entered on September 11, 1973, be and the same is overruled and denied.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ET&WNC TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk

No. FS-72-C-65

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

OPINION

JOHN E. MILLER, Senior District Judge.

On September 17, 1973, a motion was filed by the United States and the ICC seeking an amendment to the judgment so as to provide that the proceedings which are the subject of this suit be remanded to the ICC for further proceedings.

The sole reason assigned in support of the motion is that the form of judgment entered by this court "is a matter beyond the jurisdiction of the court in the circumstances presented."

In its original opinion of September 11, 1973, the court at page 47 in Section 29 of its Conclusions of Law concluded:

> "There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of 'the present or future public convenience and necessity.' For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission."

Accordingly the court entered a judgment declaring that the orders of the ICC authorizing the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); "be and they are permanently suspended, annulled, and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity."

The suit was filed in this court on October 4, 1972.

The prayer of the complaint is "that upon final hearing and determination of this action, judgment be entered to permanently

suspend, enjoin, annul and set aside the orders of the Defendant Commission herein complained of, and that this court enjoin and prohibit the Interstate Commerce Commission from issuing the Certificates of Public Convenience and Necessity to the so-called successful applicants, or, in the alternative, that the matter be remanded to the Defendant Commission for appropriate action under the applicable facts and law."

During the pendency of the action neither of the moving defendants nor any of the intervening defendants challenged or questioned in any way the jurisdiction and authority of this court to enter such an order. All of the defendants in their answers to the complaint took the position that the relief prayed should not be granted, and none of the defendants or intervenors contended that the complaint requested relief beyond the jurisdiction of the court.

The Interstate Commerce Act, 49 U.S.C., § 17(9), provides that when rehearing or reargument or reconsideration of any decision, order, or requirement of a Division shall have been denied by the Commission or an Appellate Division that a suit "to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise." This provision of the act was made applicable to motor carrier proceedings by 49 U.S.C., §§ 305(g) and (h).

The Administrative Procedure Act, 5 U.S.C., § 706, provides that the reviewing court shall "compel agency action unlawfully withheld" and "hold unlawful and set aside agency action,

findings, and conclusions found to be * * * arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Title 28, U.S.C., § 1336(a), provides that the District Courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Title 28, U.S.C., § 2325, requires that an "interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission, be granted only by a three-judge court."

Soon after the suit was filed there was a hearing before a single Judge of this court, and a temporary restraining order was issued pursuant to 28 U.S.C., § 2284(3). Arkansas-Best Freight System, Inc., v. United States, (1972) 350 F.Supp. 539. No one contended at that hearing that the Judge was without authority to issue the temporary restraining order, and there is no statute which by its provisions prevents a three-judge court on a hearing on the merits from issuing a permanent injunction.

The movants argue that it is beyond the province of the court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity, and cite and rely upon four cases in support of that argument. None of the cases reveal any extraordinary facts as does the present record. The cases relied upon by movants may be summarized as follows:

Arrow Transportation Co. v. Cincinnati, N.O. & T.P. R. Co., (1965) 379 U.S. 642, 85 S.Ct. 610, 13 L.Ed.2d 550. This case is clearly distinguishable. In Arrow the District Court entered an

opinion and order, 229 F.Supp. 572 (S.D. Ohio 1967), setting aside the agency order without giving any explanation whatsoever why the proceeding was not being remanded to the agency. In a per curiam opinion the Supreme Court directed that the proceeding be remanded to the Commission, citing only to Idaho Power Co., hereinafter discussed.

United States v. Sasketchewan Minerals, (1966) 385 U.S. 94, 85 S.Ct. 254, 17 L.Ed.2d 192. In this case the District Court did remand the proceeding to the Commission. 253 F.Supp. 504, 509 (W.D.Wis. 1965). However, its order of remand set forth unusually strict guidelines circumscribing the scope of the agency's consideration of the proceeding on remand. On appeal the Supreme Court stated that the District Court went too far, stating: "Under the circumstances present here, this restriction is an improper limitation on the Commission's duty to reconsider the entire case." 385 U.S. 95, 17 L.Ed.2d 193.

Federal Power Commission v. Idaho Power Co., (1952) 344 U.S. 17, 73 S.Ct. 85, 97 L.Ed. 15. This is the principal case relied upon by movants. A quotation from this case appears on page 2 of movants' memorandum, but it is significant to note that movants fail to point out that the statement quoted was characterized by the Court only as a "guiding principle." The statement is, by no means, an inflexible rule applicable to all proceedings. As hereinafter demonstrated, many cases recognize and apply the reciprocal of this "guiding principle," that is, that a remand will not be ordered unless it appears that it would serve a useful purpose in furtherance of the ends of justice.

Interstate Commerce Commission v. Parker, (1945) 326 U.S. 60, 65 S.Ct.1490, 89 L.Ed. 2051. This case has nothing to do with

the issue now before the court. It deals only with the broad principles applicable to the Commission's basic determination of the issue of public convenience and necessity.

The court readily recognizes that, in a proper situation, a reviewing court should remand a proceeding to the Commission for further consideration and disposition by the Commission. The situation before this court, however, does not justify such action and, indeed, would not be consistent with orderly procedure nor would it further the ends of justice. The record in this case is voluminous. We are here concerned with the application of three carriers, whereas the record that would be sent back to the Commission on remand deals with the applications of ten carriers.

During the last arguments before the court, a member of the court asked counsel for defendant Johnson if large portions of the record were wholly unrelated to the applications before the court. Counsel acknowledged that this was correct. Indeed, there are tremendous portions of this record that are wholly unrelated to the applications of Red Ball, Bowman and Johnson. This is a unique situation resulting from the Commission's consolidation of ten major applications, and is a significant fact bearing upon the court's consideration of the Government's motion. The law requires the court to note and consider the uniqueness of the situation.

Since such a large part of the record is unrelated to these applications, a remand of this record would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity. In like manner, if a second court review should later be required, the reviewing court would then be confronted

with such a massive record, containing ancient facts, no feasible review of such record could be made.

The court's opinion makes it abundantly clear that the Commission could not, on this record, enter a valid order approving these applications. Accordingly, a new record is required before any valid grant of authority could be made to these carriers.

These applications were filed with the Commission in 1965 and the hearing began in 1966 and ended in 1967. As stated in the court's opinion (p. 47), "the facts developed in this record have little bearing on a determination at this time of 'the present or future public convenience and necessity.'"

This court has concluded that the evidence of record before the Commission did not justify or support the Commission's grant of authority embodied in the orders reviewed by the court. That finding is not challenged by the motion now before the court. The motion suggests only that the proceeding must (not should) be sent back to the Commission. If this were to be done, the Commission would have before it an extensive record dealing with five and six year old facts. It is apparent, as a matter of law, that such facts could not lawfully support a finding of public need for additional motor carrier service in 1973 or 1974. As pointed out in the court's opinion, there has been a drastic change in circumstances since the record was closed in 1967. For example, evidence relating to service rendered in 1965 and 1966 by three single-line carriers between Atlanta and Dallas would be of no value whatsoever to a determination of the adequacy or inadequacy of service presently rendered by the 13 single-line carriers now authorized to operate between these cities. These facts are discussed on pages 26-27 and 42-44 of the court's opinion. Since, as pointed out on

page 43 of the opinion, the Commission is obligated to consider recent grants of authority, no valid consideration of these applications could be made without giving effect to the extensive changes that have occurred since 1967.

If applicants Red Ball, Bowman and Johnson are still of the opinion that the present or future public convenience and necessity justify and require approval of their applications, the obvious answer is that they should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts.

The Government's motion states that this court's judgment of September 11, 1973, "permanently enjoins the issuance of certificates of public convenience and necessity." This, of course, is a misstatement of the court's action. The judgment referred specifically to the orders of the Commission in the proceedings identified by style and docket number and held that such orders "are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of public convenience and necessity." (Emphasis added.) The only certificates referred to are those that were granted by the specific orders found by this court to be invalid. It is obvious that the Commission stands perfectly free to issue any certificates deemed by the Commission to be appropriate except the three certificates described in the Commission's orders that were set aside by the judgment. Red Ball, Bowman and Johnson stand perfectly free to file new applications tomorrow, and the Commission stands free to issue certificates of public convenience and necessity pursuant

to such applications without any restraint whatsoever by this court.

The Commission has long recognized the inappropriateness of considering a public-convenience-and-necessity application on the basis of facts that have only historical value. For example, in a proceeding involving an application to extend a rail line (which requires proof of public convenience and necessity, 49 U.S.C., § 1(18), (19)), the Commission stated:

> "We cannot see that any useful purpose would be served by a hearing at this time to permit the applicants an opportunity to endeavor to prove that, on the basis of the conditions as they existed in 1927, the issuance of the certificate was proper. Any conclusion we might reach would have to be based on the present and future public convenience and necessity.
>
> " * * * This action does not foreclose the filing of a new application and a hearing thereon at which evidence may be submitted as to whether the present and future public convenience and necessity require the construction which might be proposed." Waco, B., T. & S. Ry. Co. Construction, 254 I.C.C. 327, 337.

Upon a reversal by the court the question whether the proceedings should be remanded to the Commission for further consideration or whether the orders reviewed by the court should be set aside and held for naught depends upon the facts and the statutory scheme involved. In many cases the facts and circumstances as found by the reviewing court and verified by the record disclose that a remand is neither necessary nor proper. The circumstances and facts in the instant case as set forth in the court's opinion conclusively establish that this proceeding should not be remanded to the Commission, and a remand would only create further confusion and result in injustice.

In the consideration of the motion the court has examined several relevant decisions which, in view of the facts and circumstances, require that the motion be denied.

In its opinion this court quoted with approval from the opinion written by District Judge Collinson in Campbell Sixty-Six Express, Inc. v. United States, (W.D. Mo. 1966) 258 F.Supp. 529. The decision in that case is particularly pertinent to the issues discussed by this court in its opinion. It is equally pertinent to the issue presented by the Government's motion. In Campbell the three-judge court was presented with a suit (filed by one of the plaintiffs herein) challenging the validity of an order entered by the ICC granting a Certificate of Public Convenience and Necessity to Roadway Express (another plaintiff herein). In that case, as in the case at bar, the Hearing Examiner denied the application, but a Division of the Commission, while recognizing the correctness of the Examiner's findings of fact, reached a contrary conclusion and granted Roadway's application. The court concluded that the Commission's action was "arbitrary and capricious" and directed that the order of the Commission be "set aside and declared to be void." There was no remand to the Commission, and there was no appeal. Roadway, the applicant in that proceeding, subsequently filed a new application with the Commission and, on the basis of a new and currently adequate record, obtained a certificate.

Pacific Coast Wholesalers' Ass'n v. United States, (S.D. Cal. 1949) 81 F.Supp. 991, was decided by a three-judge court. A suit was filed seeking to set aside an order of the ICC on the ground that there was no rational basis for the Commission's conclusions. The court recognized that "there is evidence of substance to support the Commission's findings of fact," but found the Commission's conclusions "have no rational basis and must be set aside." The exact form of the judgment was that "the same

are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined." The case was affirmed on appeal, 338 U.S. 689, 70 S.Ct. 411, 94 L.Ed. 474 (1950). In the per curiam opinion no mention was made of the form of the judgment entered by the District Court.

A similar result was reached in Shannon v. United States, 219 F.Supp. 781 (W.D. Tex. 1963), which was also affirmed on appeal, 377 U.S. 311, 84 S.Ct. 1260, 12 L.Ed.2d 341 (1964). In that case the three-judge court set aside an order of the ICC, using the following terminology:

> "There is not substantial evidence in the record upon which to base the Interstate Commerce Commission's findings and conclusions * * * defendants should be permanently enjoined from enforcing the terms of said order * * *."

In Garrett Freightlines, Inc. v. United States, (D. Idaho 1971) 324 F.Supp. 575, the three-judge court upheld the Commission's order, in part, and set it aside, in part, stating:

> "It is hereby ordered, adjudged and decreed that the order of the defendant Interstate Commerce Commission * * * granting certain changes in the Certificate of Convenience and Necessity of the applicant therein, be, and the same hereby is, vacated, annulled and set aside."

A similar result was reached in Ashworth Transfer, Inc., v. United States, (D. Utah 1970) 315 F.Supp. 199. And see Pennsylvania R.R. v. United States, (E.D. Pa. 1962) 202 F.Supp. 584, where the court permanently enjoined an order of the Commission which had cancelled a rate increase. No appeal was taken in Garrett, Ashworth, or Pennsylvania R.R.

Although the facts and circumstances are quite different, the case of Zuber v. Allen, (1969) 396 U.S. 168, 90 S.Ct. 314, 24 L.Ed.2d 345, clearly stands for the proposition that a remand to

the administrative agency is not always required. That proceeding involved an order entered by the Secretary of Agriculture, and the District Court entered a permanent injunction. The Court of Appeals affirmed in an opinion that specifically noted that there was "no readon" to remand the proceeding. 402 F.2d. at 475. The Supreme Court affirmed and, on the question of remand, noted that: "Counsel for the Department has advanced no new theory for sustaining the order." 396 U.S. at 196, 24 L.Ed.2d at 362.

The result reached by the court in the consideration of the motion in the case at bar is fully supported by the reasoning in Office of Communication of the United Church of Christ v. Federal Communications Commission, (CA DC 1969) 425 F.2d 543. That proceeding involved an application by a television station for a renewal of its license. Initially, in a prior appeal, the Court of Appeals had remanded the cause to the Commission. In the case cited, however, the court set aside the Commission's grant of authority and held that an entirely new proceeding should be instituted by the Commission, instead of proceeding any further on the record that was reviewed by the court. In an opinion written by now Chief Justice Burger, the court stated:

> "The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." (Emphasis added.) 425 F.2d at 550.

It is most interesting to observe that the attitude of the Commission in the case above quoted was strikingly similar to the attitude of the Commission in the case at bar. It is also

interesting to note that, in directing the Commission to start over with a new record, the court used the identical terminology utilized by this court in its opinion of September 11, 1973, that is, that "no useful purpose" would be served by remanding the proceeding to the Commission for further review and consideration of the errors described in the court's opinion.

The jurisdiction and power of the reviewing court to set aside and permanently enjoin the enforcement of an order of the ICC was clearly recognized by the Supreme Court in American Trucking Associations, Inc. v. United States, (1960) 364 U.S. 1, 80 S.Ct. 1570, 4 L.Ed.2d 1527. Although the court did conclude that the case should be remanded to the Commission, the court clearly stated in its opinion why it deemed a remand appropriate, "under the particular circumstances of this case." 346 U.S. at 17, 4 L.Ed.2d at 1538. The court made it quite clear that no remand would have been ordered except for "the particular circumstances of this case."

The relationship of the reviewing court and the administrative agency was also discussed in Interstate Commerce Commission v. Atlantic Coastline R. Co., (1966) 383 U.S. 576, 86 S.Ct. 1000, 16 L.Ed.2d 109. There the court was concerned with the problem of when a carrier could file a suit for review of a Commission order under section 17(9) of the Interstate Commerce Act. It recognized that in some instances a remand to the Commission is required, but that in other cases, the court can finally dispose of the matter "without any necessity for a remand to the Commission." 383 U.S. at 601, 16 L.Ed.2d at 127.

Various other decisions also recognize that a reviewing court may or may not remand a proceeding to the Commission, after

concluding that the agency's order is invalid. This was recognized, for example, in Williams v. Washington Metropolitan Area Transit Com'n, (CA DC 1969) 415 F.2d 922, 939-40. In that case the court concluded that remand would be "futile" or "manifestly unwarranted" due to "changed circumstances." In Washington Gas Light Co. v. Baker, (CA DC 1951) 195 F.2d 29, 35, the Court of Appeals held that the District Court went too far with its order of remand and directed the lower court to dispose of all of the issues that could be decided on the record before the court rather than referring such issues for decision to the Commission.

The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid. The motion does not contest the court's ruling that such orders are invalid, and, since such orders are invalid, their enforcement should be enjoined.

The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's prerogative to exercise its administrative functions.

The motion of the United States and the Interstate Commerce Commission filed September 17, 1973, is without merit and an order overruling and denying said motion is being entered today.

This 4th day of October, 1973.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

APPENDIX D

Notice of Appeal to the Supreme Court of the United States filed by Red Ball Motor Freight, Inc. on October 10, 1973.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
OCT 10 1973
E. A. Riddle, Clerk
By Deputy Clerk

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al,

Plaintiffs

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Defendants,

RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al,

Intervening Defendants.

CIVIL ACTION NO. FS-72-C-65

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RED BALL MOTOR FREIGHT, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973 and October 4, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Sander W. Shapiro

Sander W Shapiro

Attorney for Intervening Defendant, RED BALL MOTOR FREIGHT, INC.

Of Counsel:

CLARK, THOMAS, DENIUS, WINTERS & SHAPIRO
P. O. Box 1148
Austin, Texas 78767

825

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D. C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Maurice F. Bishop, Esq.
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 8th day of October, 1973.

Sander M. Shapiro

SWORN TO AND SUBSCRIBED before me, a Notary Public, on the day and year aforesaid.

Frances Colby
Notary Public, Travis County, Texas

APPENDIX P

Notice of Appeal to the Supreme Court of the United States filed by Lorch-Westway Corporation, et al, on November 5, 1973.

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al., Intervening Defendants.	Civil Action No. FS-72-C-65

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that LORCH-WESTWAY CORP., et al.*, Intervening Defendants named above, hereby appeal to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973, and October 4, 1973, separately and severally.

---

* Lorch-Westway Corp.; Simmons Co., Southern Division; Dunham-Bush, Inc.; Leff Brothers Dry Goods Co.; Seneca Textile Corp.; Morgan and Lindsey, Inc.; Western Textile Products Co.; Metal Trims, Inc.; Ero, Inc.; Capitol Bolt and Screw Co.; Olinkraft, Inc.; Jantzen Southern, Inc.; S. Klein (Division of McCrory Corp.); Monroe Wholesale Drug Co.; Ethyl Corp.; Hanna Barber & Beauty Supply Co.; Stayon Products, Inc.; American Greetings Corp.; Canteen Corp.; Campus Sweater and Sportswear Co.; Walgreen Co.; M. Lowenstein & Sons, Inc.; McNeil Laboratories, Inc.; Congoleum Nairn, Inc.; Her Majesty Underwear Co.; Avco-Bay State Abrasive Products Co.; Tupperwear Co.; Louis Hand, Inc.; Carol Wire & Cable Corp.; Foxboro Co.; Dapol Plastics, Inc. and Worcester Toy Co., Inc.; Berkshire Hathaway, Inc.; Pennsylvania Dutch Co.; Shiny Brite Div. of Poloron Co. (formerly Max Eckardt & Sons, Inc.); Magla Products, Inc.; K S M Division of Omark Industries, Inc.; Warner-Chilcott Laboratories (Division of Warner-Lambert Co.); Monroe International, Inc. (Division of Litton Industries); Becton, Dickinson & Co.; American Cyanamid Co.; and Mississippi Bedding Co.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully submitted,

Charles S. Rhyne

Courts Oulahan

Rhyne & Rhyne
400 Hill Building, N.W.
Washington, D.C. 20006
(202) 347-7992

Robert L. Jones, Jr.

412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Attorneys for Intervening Defendants
Lorch-Westway Corporation et al.

Of Counsel:

Jones, Gilbreath & Jones
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Maurice F. Bishop, Esq.
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

John H.D. Wigger, Esq.
Department of Justice
Washington, D.C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D.C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 30th day of October, 1973.

Charles S. Rhyne
Charles S. Rhyne

Sworn to and subscribed before me,
the day and year aforesaid.

Daphne G. Kennard
Notary Public

APPENDIX Q

Notice of Appeal to the Supreme Court of the United States filed by the United States of America and the Interstate Commerce Commission on November 9, 1973.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, MERCURY MOTORS, INC., an Arkansas corporation, ARMED EXPRESS, INC., BARWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., CHANIC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,	Civil Action
Plaintiffs,	No. FS-72-C-65
ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,	
Intervening Plaintiffs,	
v.	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	
Defendants,	
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOLMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,	
Intervening Defendants.	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the United States of America and the Interstate Commerce Commission, the defendants in the above-styled action, hereby appeal to the Supreme Court of the United States from the judgment of this Court entered

September 11, 1973 and the order of this Court entered [illegible] 4, 1973. This appeal is taken pursuant to [illegible], [illegible].

The entire record in this action is hereby designated for certification and the Clerk of the District Court [illegible] prepare and transmit the entire record to the Clerk of the Supreme Court of the United States.

This the [illegible] [illegible], [illegible].

[illegible] E. KAUPER
Assistant Attorney General

[illegible] E. JOHNSON
United States Attorney
Fort Smith, Arkansas 72[illegible]

[illegible] [illegible]
Attorney
Department of Justice
[illegible], D.C. [illegible]

Attorneys for the United States of America

[illegible]
General Counsel

[illegible] J. [illegible]
Deputy General Counsel

[illegible] JO CHRISTIAN
Associate General Counsel

[illegible]
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission

PROOF OF SERVICE

I, Seymour Glanzer, one of the attorneys for defendant [illegible] Court of the United States, [illegible] certify that on the [illegible] November, [illegible], I serve [illegible] the foregoing [illegible] appeal on the several [illegible] to this action as follows:

1. On the plaintiffs and intervening plaintiffs herein, [illegible] copies in duly addressed envelopes to attorneys of [illegible] as follows:

With first-class postage prepaid to Drew L. Carraway, Esq., Rice, Carpenter and Carraway, 51[illegible] Perpetual Building, 111 [illegible] Street, N.W., Washington, D.C. 20004.

With first-class airmail, postage prepaid to Thomas Harper, Esq. and Don A. Smith, Esq., Harper, Young & Smith, P.O. Box 43, Fort Smith, Ark. 72901; Robert E. Joyner, Esq., Joyner, Goff & Sims, 2008 Clark Tower, 5100 Poplar Ave., Memphis, Tenn. [illegible]; Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Bldg., P.O. Box [illegible], Jackson, Miss. 39205; Phillip Robinson, Esq., Robinson, Felts, Starnes & Nations, P.O. [illegible]07, Austin, Texas 7[illegible]; Frank W. Taylor, Jr., Esq. and Wentworth E. Griffin, Esq., Reeder, Dysart, Sanders & Taylor, 1[illegible] Baltimore Ave., Kansas City, Mo. 64105; M. Ward Bailey, Esq., Christopher, Bailey & Taylor, 2412 Continental Life Bldg., Fort Worth, Texas 76102; William O. Turney, Esq., 2001 Massachusetts Ave., N.W., Washington, D.C. 20036.

2. On intervening defendants herein, by mailing copies in duly addressed envelopes, to their respective attorneys of record, as follows:

With first-class postage prepaid to Donald E. Cross, Esq., Rea, Cross and Knebel, 700 World Center Bldg., 918 Sixteenth St., N.W., Washington, D.C. 20006, attorney for intervening defendant

Johnson Motor Lines, Inc.; Charles S. Rhyne, Esq., and Courts Oulahan, Esq., Rhyne & Rhyne, 839 17th St., N.W., Suite 400, Washington, D.C. 20006, attorneys for intervening defendants Lorch-Westway Corporation, et al.

With first-class airmail postage prepaid to Maurice F. Bishop, Esq., Bishop, Carlton & Sweeney, 601-09 Frank Nelson Bldg., Birmingham, Ala. 35203, attorney for intervening defendant Bowman Transportation, Inc.; Edward A. Clark, Esq., Jerry C. Prestridge, Esq., Donald S. Thomas, Esq., Clark, Thomas, Denius, Winters and Shapiro, P.O. Box 1148, Austin, Texas 78767, attorneys for intervening defendant Red Ball Motor Freight, Inc.; Robert L. Jones, Jr., Esq., Jones, Gilbreath & Jones, 412 Merchants National Bank Bldg., Fort Smith, Ark. 72901, attorney for intervening defendants, Johnson Motor Lines, Inc., and Lorch-Westway Corporation, et al.

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423.

APPENDIX R

Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements filed with the Clerk of the United States Supreme Court on November 12, 1973.

IN THE SUPREME COURT

OF THE UNITED STATES

RECEIVED
NOV 1 6 1973
OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION; BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; and LORCH-WESTWAY CORPORATION, ET AL.,	)
Appellants,	)
-v-	) APPLICATION NO. _____
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,	)
Appellees.	)

RECEIVED
NOV 12 1973
OFFICE OF THE CLERK
SUPREME COURT, U.S.

APPLICATION TO FIX TIME OR
FOR EXTENSION OF TIME TO
DOCKET CASE ON APPEAL AND TO
FILE JURISDICTIONAL STATEMENTS

Application is hereby made under Rules 13(1) and 34(2) of the Supreme Court of the United States by the Appellants, Bowman Transportation, Inc., Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc., and Lorch-Westway Corporation, et al. (Bowman, Johnson, Red Ball, and Lorch-Westway, respectively, and collectively, Appellants), to fix the time or for an extension of time to and including January 8, 1974, for the named Appellants to docket the case on appeal to this Court and to file jurisdictional statements.

The grounds in support of said request are as follows:

1. This case involves applications to the Interstate Commerce Commission (Commission) by the motor carrier Appellants (Bowman, Johnson, and Red Ball) under Title 49, Section 307 of the United States Code for extensions of their operating rights. The remaining Appellant, Lorch-Westway, is composed of a group of 41 intervening shippers who supported the need for additional motor carrier service. The applications were heard, considered,

and determined by the Commission on a consolidated record. The applications of Bowman, Johnson, and Red Ball were approved by the Commission by Order served January 24, 1972, in Herrin Transportation Co., Extension - Atlanta, Georgia, 114 M.C.C. 571. Petitions for reconsideration were denied by Order of the Commission served September 6, 1972, following which, and on October 4, 1972, some of the protestant carriers filed a complaint in the United States District Court for the Western District of Arkansas, Fort Smith Division, under Title 28, United States Code, Sections 1336, 1398, 2284, and 2321 through 2325, inclusive, of said Title, and Title 49, United States Code, Section 305(g) through Section 305(h), and 5 United States Code, Sections 701 through 706, styled:

> Arkansas-Best Freight System, Inc., et al., Plaintiffs, v. United States of America and Interstate Commerce Commission, Defendants, Red Ball Motor Freight, Inc.; Johnson Motor Lines, Inc.; Bowman Transportation, Inc. and Lorch-Westway Corp., et al., Intervening Defendants, Case No. FS-72-C-65.

2. On September 11, 1973, the District Court entered a final Order and Judgment and declared the Order of the Commission approving the applications for extension of operating rights void and permanently restrained and enjoined the Commission from issuing the certificates of public convenience and necessity to Bowman, Johnson, and Red Ball.

3. On September 17, 1973, the United States and the Commission filed a Motion in the District Court seeking an amendment to the Judgment to remand the cause to the Commission for further proceedings. This Motion was overruled and denied by the District Court by Order entered October 4, 1973.

4. All affected parties have appealed to this Court on the following dates indicated[1/] from the Orders of the District Court under Title 28,

---

1/ The appeal of Johnson was from the Order and Judgment of the District Court of September 11, 1973. All other Appellants filed notices of appeal from the Orders and Judgments of the District Court entered September 11, 1973, and October 4, 1973.

United States Code, Sections 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States:

Appellant		Date Appeal Filed
Johnson Motor Lines, Inc.		September 27, 1973
Bowman Transportation, Inc.	and	October 2, 1973 October 19, 1973
Red Ball Motor Freight, Inc.		October 10, 1973
Lorch-Westway Corporation, et al.		November 2, 1973
United States of America and Interstate Commerce Commission		November 9, 1973

5. To conserve time and costs and to provide for uniformity and clarity, the Appellants jointly propose to file a consolidated Appendix containing all pertinent orders of the Commission and the Court, all notices of appeal and other pertinent documents in connection with their jurisdictional statements. This could not be accomplished until all appeals were filed. An earlier or separate printing of the Appendix would be wasteful duplication.

6. Appellants by this application respectfully seek to fix a uniform date to correspond with the notice of appeal taken by the United States of America and Interstate Commerce Commission to be fixed or extended to and including January 8, 1974.

7. Approval of this request will not delay submission or consideration of the jurisdictional statements since no extension beyond the time allowed under existing rules to the United States of America and Interstate Commerce Commission, as an Appellant, is requested.

For the foregoing reasons, it is respectfully submitted that the request to fix the time to docket this case on appeal and for filing jurisdictional statements to and including January 8, 1974, should be granted.

Dated this 12th day of November, 1973.

Respectfully submitted,

BISHOP, CARLTON & SWEENEY
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Maurice F. Bishop, Attorney for Appellant,
Bowman Transportation, Inc.

JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767

Attorney for Appellant,
Red Ball Motor Freight, Inc.

DONALD E. CROSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

Attorney for Appellant,
Johnson Motor Lines, Inc.

COURTS OULAHAN
400 Hill Building, N.W.
Washington, D. C. 20006

Attorney for Appellants,
Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Thomas A. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

*Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

[illegible] Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

[illegible] D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Dated at Washington, D. C., this 14th day of November, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public

APPENDIX S

Request for Designation and Certification of the Record filed with the Clerk of the United States District Court on November 14, 1973.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al,	)	
Plaintiffs,	)	
-v-	)	CIVIL ACTION NO. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)	
Defendants,	)	
RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al,	)	
Intervening Defendants.	)	

U. S. District Court
Western Dist. Arkansas
FILED
NOV 14 1973
E. [illegible], Clerk
By [signature]
Deputy Clerk

REQUEST FOR DESIGNATION AND
CERTIFICATION OF THE RECORD

Pursuant to Rule 12 of the Supreme Court of the United States, the undersigned appellants respectfully request the Clerk of the above Court to certify the entire record and to provide for its transmittal to the Clerk of the Supreme Court of the United States. It is respectfully requested that the certification and transmittal include (a) the entire record as certified to this Court by the Secretary of the Interstate Commerce Commission, which includes the entire record before said Commission, and (2) the entire record before this Court, including, but not limited to, all pleadings and orders, the opinions and judgments entered on September 11, 1973 and October 4, 1973 and all notices of appeal. Pursuant to Rule 12(2), it is requested that there be transmitted with the record a numbered list of the documents, identifying each with reasonable definiteness.

This 12th day of November, 1973.

BISHOP, CARLTON & SWEENEY
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Maurice F. Bishop, Attorney for Intervening Defendant, Bowman Transportation, Inc.

JERRY PRESTRIDGE
P. O. Box 1148
Austin, Texas 78767

Attorney for Intervening Defendant, Red Ball Motor Freight, Inc.

DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Attorney for Intervening Defendant, Johnson Motor Lines, Inc.

COURTS OULAHAN
400 Hill Building, N.W.
Washington, D. C. 20006

Attorney for Intervening Defendants, Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Request for Designation and Certification of the Record upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Dated at Washington, D. C. this 12th day of November, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

My Commission Expires September 30, 1976

843

APPENDIX T

Order of Hon. Harry A. Blackmun, Associate Justice of the Supreme Court of the United States, entered November 13, 1973, fixing the time for docketing appeals to and including January 8, 1974.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 14, 1973

Maurice F. Bishop, Esquire
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

RE: Bowman Transportation, Inc., John Motor Lines, Inc., Red Ball Motor Freight, Inc., & Lorch-Westway Corp., v. Arkansas-Best Freight System, Inc., et al., A-475

Dear Mr. Bishop:

Your application, which included the applications of counsel for other above-mentioned appellants, for extensions of time in which to docket appeals in the above-entitled case was presented to Mr. Justice Blackmun who, on November 13, 1973, signed an order extending your time to and including January 8, 1974.

A copy of the Justice's order is enclosed. Kindly advise opposing counsel of this action.

A copy of this letter together with a certified copy of the Justice's order is being sent to counsel for each of the above-mentioned appellants.

Very truly yours,

MICHAEL RODAK, Jr., Clerk

By Arthur G. Christean
Arthur G. Christean
Deputy Clerk

Enclosure

lab

cc: Donald E. Cross, Esq. - Enc.
Jerry C. Prestridge, Esq. - Enc.
Courts Oulahan, Esq. - Enc.
Thomas A. Harper, Esq.
Honorable Robert H. Bork

Supreme Court of the United States

No. A-475

BOWMAN TRANSPORTATION, INC.,
JOHNSON MOTOR LINES, INC.,
RED BALL MOTOR FREIGHT, INC., and
LORCH-WESTWAY CORPORATION,

Appellants

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.

O R D E R

UPON CONSIDERATION of the application of counsel for appellants,

IT IS ORDERED that the time for docketing appeals in the above-entitled cause be, and the same is hereby, extended to and including January 8 -----, 1974.

/s/ Harry A. Blackmun
Associate Justice of the Supreme
Court of the United States

Dated this 13th
day of November, 1973.

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A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court of the United States
BY Arthur G. Christean
Deputy

[redacted]

ERRATA SHEET

App.	Page	Line	Para.	
V	873	9	1st	insert "that" between the words "further" and "any"
V	1070	4-5	1st	"approxi-maetly"—s h o u l d be "approxi-mately"
V	1118	4th	2nd	under "Commodities Requiring Refrigeration" insert comma after the word "Transport"
V	1143	1	last	"Twe" should be "Two"
V	1183	3rd	2nd	substitute a "." instead of the "," following the words "United States"
V	1240	7	2nd	the word "carries" should be "carrier"
V	1244	8	1st	"34.3 percent" should be "35.4 percent)
V	1253	1		entitled "Operations:"—the word "cvarrier" should be "carrier"
V	1267			2nd line from bottom "28,770" under the column Tonnage—should be "280,770"
X	1287	12	2nd	"ir" should be "or"
X	1291	14	2nd	"carfuel" should be "careful"
X	1293	1	1st	"enteres" should be "enters"

App.	Page	Line	Para.	
X	1295	1	1st	"transittime" should be "transit time"
X	1295	10	2nd	Sentence beginning on that line should read as follows: "No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex moro motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies."
X	1299	28	1st	insert the word "between" before "Charlotte"
X	1301	4	3rd	"much of the" should be "much of such"
X	1303	16	2nd	"Albama" should be "Alabama"
X	1303	18	2nd	insert "the" before the word "authority"
X	1305	8	No. 3	"evidenec" should be "evidence"
X	1305	21	No. 3	"F.Sup." should be "F.Supp."
X	1307	3	No. 6	"questions" should be "question"
X	1308	4	No. 8	"eject" should be "reject"
X	1313	2	No. 17	"prelicated" should be "predicated"
X	1314	4	No. 21	"camparative" should be "comparative"

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Volume II

Appendix		Page
U	The Relevant Docket Entries	847
V	The Report and Order Recommended by Gerald E. Jessup and Edward E. Kobernusz, Hearing Examiners, in Herrin Transportation Company, Extension—Atlanta, Georgia, served November 19, 1969	863
W	The Order of the Interstate Commerce Commission dated October 6, 1972, denying petitions seeking a declaration by the Commission that Herrin Transportation Company, Extension—Atlanta, Georgia, involved an issue of General Transportation Importance	1271
X	Order and Judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, in Arkansas-Best Freight System, Inc., et al. v. United States of America and Interstate Commerce Commission and Red Ball Motor Freight, Inc., et al., entered September 11, 1973 (originally printed as Appendix J in the Joint Appendix to Jurisdictional Statements, pages 739-794, inclusive. Reprinted in full herein)	1275

APPENDIX U

The Relevant Docket Entries

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas Corporation, et al.,

Plaintiffs,

v. Civil No. FS-72-C-65

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al.,

Defendants.

DOCKET ENTRIES

Certificate

I, E. A. Riddle, Clerk of the United States District Court for the Western District of Arkansas, do hereby certify that the record in the captioned case consists of ninety-eight **original** documents, ten briefs, two reporter's transcripts of proceedings in District Court and fourteen volumes of abstracts of evidence, set forth on the lists attached hereto, together with a record of the proceedings before the Interstate Commerce Commission which was filed as part of the record in the case.

All of the record, except the voluminous record of the proceedings before the Interstate Commerce Commission, is forwarded herewith in one registered package. The record of the proceedings before the Interstate Commerce Commission, in four cardboard boxes, as received and filed in this office, is being forwarded by motor freight in one box in accordance with directions of appellants.

This November 15, 1973, at Fort Smith, Arkansas.

s E. A. RIDDLE
Clerk

(Seal)

INDEX Volume I

Document No.	Description of Document
1.	Complaint filed October 4, 1972.
2.	Order entered October 4, 1972, requesting Interstate Commerce Commission to refrain from issuing and putting into effect certificates complained of.
3.	Telegram from firm of Rea, Cross & Knebel addressed to Clerk requesting that it be notified of filing of this action, filed Oct. 4, 1972.

INDEX Volume II

Document No.	Description of Document
4.	Order entered October 11, 1972, designating members of three-judge court.
5.	Motion of Johnson Motor Lines, Inc., for Leave to Intervene as Defendant, filed Oct. 12, 1972.
6.	Order Granting leave to Johnson Motor Lines, Inc., to intervene as defendant, entered Oct. 12, 1972.
7.	Answer of Intervenor Johnson Motor Lines, Inc., filed Oct. 12, 1972.
8.	Motion of Red Ball Motor Freight, Inc., for Leave to Intervene as a Defendant, filed Oct. 12, 1972.
9.	Order granting leave to Red Ball Motor Freight, Inc., to intervene as defendant, entered Oct. 12, 1972.
10.	Answer of Intervenor-Defendant, Red Ball Motor Freight, Inc., filed Oct. 12, 1972.

11. Summons to Interstate Commerce Commission returned by Marshal, as executed, filed Oct. 12, 1972.

12. Marshal's Return on summons to United States of America, as executed, filed Oct. 12, 1972.

13. Statement of court suggesting that counsel suggest date for hearing on prayer for interlocutory injunction and also suggesting possible agreement that instead of hearing only for interlocutory injunction that it may include hearing on final merits, filed Oct. 17, 1972.

14. Motion for Leave to Intervene as Defendants of Lorch-Westway Corporation, et al., Shippers, filed Oct. 18, 1972.

15. Certificate of Service, filed Oct. 18, 1972.

16. Order allowing plffs and other parties until Oct. 30, 1972, in which to prepare, serve and submit briefs in opposition to motion for leave to intervene, entered Oct. 18, 1972.

17. Letter from Judge Miller to Mr. Donald E. Cross, dated Oct. 19, 1972, fixing date for hearing on application for temporary restraining order as Nov. 1, 1972, at 9:30 a.m., filed Oct. 19, 1972.

18. Order entered Oct. 19, 1972, setting hearing on plffs' application for temporary restraining order for Nov. 1, 1972, at 9:30 a.m.

19. Motion of Bowman Transportation, Inc., for Leave to Intervene as a Defendant, filed Oct. 25, 1972.

20. Order allowing Bowman Transportation, Inc., to intervene as defendant, entered Oct. 25, 1972.

21. Answer of Intervenor, Bowman Transportation, Inc., filed Oct. 25, 1972.

22. Motion in Opposition to Intervention of Lorch-Westway, et al., filed Oct. 30, 1972.

23. Plffs' Brief in Opposition to Intervention by Lorch-Westway and Forty-One Other Defendants, filed Oct. 31, 1972.

24. Motion of Roadway Express, Inc., and Roadway Express, Inc., of Mississippi for Leave to Intervene, filed Oct. 31, 1972.

25. Order entered Oct. 31, 1972, allowing Roadway Express, Inc., and Roadway Express, Inc., of Mississippi to intervene as plaintiffs.

26. Opposition of Intervening Defendant Johnson Motor Lines, Inc., to Plaintiffs' Application for Temporary Restraining Order, filed Oct. 31, 1972.

27. Affidavit of Thomas G. Sloan, Vice President—Commerce, Johnson Motor Lines, Inc., filed Oct. 31, 1972.

28. Affidavit of Larry T. McCarthy, Vice President, Red Ball Motor Freight, Inc., filed Oct. 31, 1972.

29. Memorandum Supplementing Motion for Leave to Intervene as Defendants of Lorch-Westway Corporation, et al., Shippers, filed Nov. 1, 1972.

30. Affidavit of Garfield Salyers, Jr., President and General Manager of Bowman Transportation, Inc., filed Nov. 1, 1972.

31. Memorandum Brief of Intervening Defendant, Bowman Transportation, Inc., in Opposition to Motion of Plaintiffs for Temporary Restraining Order, filed Nov. 1, 1972.

INDEX VOLUME III.

Document No.	Description of Document
32.	Affidavit of Gary D. Bronson, filed Nov. 1, 1972.
33.	Affidavit in Support of Application for Temporary Restraining Order, filed by H. M. Cook on Nov. 1, 1972.
34.	Affidavit of John M. Records, filed Nov. 1, 1972.
35.	Affidavit of L. D. Davis, Red Line Transfer & Storage Company, Inc., filed Nov. 1, 1972.
36.	Affidavit of J. Montague Williams, Mercury Motors, Incorporated, filed Nov. 1, 1972.
37.	Affidavit of Clarence Levi, Mercury Freight Lines, Inc., in Support of Application for Temporary Restraining Order and Preliminary Injunctions, filed Nov. 1, 1972.
38.	Affidavit of Frank G. Campbell, President, Campbell Sixty-Six Express, Inc., filed Nov. 1, 1972.
39.	Affidavit of James W. Conner, Commerce Attorney of Roadway Express, Inc., and Roadway Express, Inc., of Mississippi, in Support of Motion for Temporary Restraining Order and Preliminary Injunction, filed Nov. 1, 1972.
40.	Affidavit on Behalf of Gordons Transports, Inc., in Support of Application for Temporary Restraining Order filed by William F. Goodwin on Nov. 1, 1972.
41.	Order entered Nov. 1, 1972, granting intervention of Lorch-Westway Corporation and the forty other Shippers.

42. Answer of Intervenor Shippers Lorch-Westway Corporation, et al., filed Nov. 1, 1972.

43. Memorandum of Points and Authorities Submitted by Plaintiffs in Support of Application for Temporary Restraining Order and Preliminary Injunction, filed Nov. 2, 1972.

44. Certificate of Service, filed Nov. 2, 1972.

45. Statement of Counsel Regarding Affidavit in Support of Motion for Temporary Restraining Order and Preliminary Injunction of Roadway Express, Inc., and Roadway Express, Inc., of Miss., filed Nov. 3, 1972.

46. Court's Opinion, re: plffs' application for temporary restraining order, filed Nov. 7, 1972.

47. Order entered Nov. 7, 1972, restraining and enjoining Interstate Commerce Commission from implementing or making effective orders entered in Docket No. MC-1124 (Sub-No. 206) that authorize the issuance of Certificate of Public Convenience to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18), until further orders of this court.

48. Order entered Nov. 17, 1972, directing that counsel for all parties of interest serve and submit briefs in support of their contentions on or before dates mentioned in schedule set forth.

49. Joint Answer of the United States of America and the Interstate Commerce Commission, filed Dec. 4, 1972.

50. First Amended Answer of Intervenor and Defendant, Red Ball Motor Freight, Inc., filed Dec. 4, 1972.

51. Motion of Jack Cole—Dixie Highway Company for Leave to Intervene as a Plaintiff, filed Jan. 2, 1973.

52. Order allowing Jack Cole—Dixie Highway Company to intervene as a plaintiff, entered Jan. 2, 1973.

53. Motion for Extension of Time in Which to File Brief of Plaintiffs, filed Jan. 5, 1973.

54. Order entered Jan. 9, 1973, granting plffs' motion for extension of time in which to file briefs and directing counsel for all parties to serve and submit briefs in support of their contentions on or before dates mentioned in amended schedule.

55. Xerox copies of pages 176, 179, 180, 185 and 186 of plaintiffs' brief correcting typographical errors in brief, filed March 26, 1973.

56. Motion for Extension of Time in Which to File Briefs by Defendants and Intervening Defendants, filed April 5, 1973.

57. Order entered April 5, 1973, extending time for all defendants and intervening defendants to file their answer briefs to May 1, 1973; and extending time for plffs to file their reply briefs to June 1, 1973.

58. Order entered April 24, 1973, extending time for deft. Interstate Commerce Commission to serve and submit brief to May 11, 1973, and extending time for plffs to serve and submit reply brief to June 11, 1973.

59. Order entered April 26, 1973, extending time for intervening defts. Johnson Motor Lines, Inc., Red

Ball Motor Freight, Inc., and Lorch-Westway Corporation, et al., to serve and submit briefs to May 11, 1973; and extending time for plffs to serve and submit reply brief to June 11, 1973.

60. Order amending order of April 26, 1973, to extend time for plffs to serve and submit reply brief to brief of Bowman Transportation Company to June 11, 1973, entered May 7, 1973.

61. Order entered May 10, 1973, extending time for defts. Interstate Commerce Commission and United States of America to serve and submit brief to May 23, 1973; and extending time for plffs to serve and submit reply brief to June 23, 1973.

62. Order entered May 22, 1973, giving deft. Interstate Commerce Commission and deft. United States of America until May 30, 1973, to serve and submit brief; and giving plffs until June 30, 1973, to serve and submit their reply brief.

63. Order entered June 13, 1973, granting leave to firm of Crouch, Blair, Cypert & Waters to withdraw file for purpose of photocopying portions, file to be returned to Clerk's Office no later than 9 a.m., June 18, 1973.

64. Plffs' Motion for Extension of Time in Which to File Brief, filed June 25, 1973.

65. Order entered June 26, 1973, extending time for plffs to file reply brief to July 16, 1973.

66. Plffs' Motion to File Supplemental Complaint, filed June 29, 1973.

67. Order entered June 29, 1973, setting hearing on plffs' motion to file supplemental complaint for July 24, 1973, at 10 a.m.

68. Plffs' Memorandum in Support of Motion to File Supplemental Complaint, filed July 9, 1973.

68½. Motion of Intervening Defendant Johnson Motor Lines, Inc., to Dissolve Temporary Restraining Order; to Convene Three Judge Court to Hear and Determine Plaintiffs' Application for Preliminary Injunction and Motion to File Supplemental Complaint, filed July 16, 1973.

69. Motion of Daisy Manufacturing Company to Intervene as Defendants, filed July 19, 1973.

INDEX VOLUME IV.

Document No. **Description of Document**

70. Opposition of Intervening Defendant Johnson Motor Lines, Inc., to Plaintiffs' Motion to File Supplemental Complaint, filed July 23, 1973.

71. Motion of Intervening Defendant Red Ball Motor Freight, Inc., to Dissolve Temporary Restraining Order; and to Determine Plaintiffs' Application for Preliminary Injunction and Motion to File Supplemental Complaint, filed July 23, 1973.

72. Objections of Bowman Transportation, Inc., to Plaintiffs' Motion to File Supplemental Complaint, filed July 24, 1973.

73. Affidavit of Phineas Stevens, Counsel of Record for Red Line Transfer & Storage Co., Inc., filed July 24, 1973.

74. Order entered July 30, 1973, denying without prejudice plffs' motion to file a supplemental complaint.

75. Order entered July 30, 1973, reciting that parties may proceed to submit requested Findings of Fact and Conclusions of Law and case is submitted upon complete record now in possession of court, the arguments of counsel heretofore presented and all briefs heretofore submitted.

76. Order entered July 30, 1973, allowing Daisy Manufacturing Company, et al., to withdraw motion to dismiss, motion in opposition to granting temporary restraining order and motion to file answer.

77. Order entered Aug. 3, 1973, extending time for attorneys for defts to file requested findings of facts and conclusions of law to Aug. 13, 1973, and extending time for plffs to file requested findings of fact and conclusions of law to Aug. 13, 1973.

78. Joint Proposed Findings of Fact and Conclusions of Law Submitted by the United States of America and the Interstate Commerce Commission, filed Aug. 13, 1973.

79. Proposed Opinion, Findings of Fact, and Conclusions of Law of Defendants Red Ball Motor Freight, Inc., Johnson Motor Lines, Inc., and Lorch-Westway Corporation, et al., filed Aug. 13, 1973.

80. Court's Opinion, filed Sept. 11, 1973.

81. Judgment entered Sept. 11, 1973, permanently suspending, annulling and setting aside and declaring void orders of Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension—Atlanta, Ga., to the extent that said orders authorize issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in

Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motors Lines, Inc., in Docket No. MC-106401 (Sub-No. 18).

82. Motion of the United States of America and The Interstate Commerce Commission for Amendment of Judgment, filed Sept. 17, 1973.

83. Memorandum of the United States of America and The Interstate Commerce Commission in Support of the Motion for Amendment of Judgment, filed Sept. 17, 1973.

84. Plaintiffs' Memorandum in Opposition to Motion for Amendment of Judgment, filed Sept. 24, 1973.

85. Notice of Appeal to the Supreme Court of the United States filed Sept. 27, 1973, by Johnson Motor Lines, Inc., intervening deft.

86. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Sept. 27, 1973.

87. Notice of Appeal to the Supreme Court of the United States filed Oct. 2, 1973, by Bowman Transportation, Inc., intervening deft.

88. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Oct. 2, 1973.

89. Court's Opinion re: motion of United States of America and Interstate Commerce Commission seeking an amendment to judgment, filed Oct. 4, 1973.

90. Order entered Oct. 4, 1973, overruling and denying motion of United States of America and Interstate Commerce Commission for amendment of judgment entered Sept. 11, 1973.

91. Notice of Appeal to the Supreme Court of the United States filed Oct. 10, 1973, by Red Ball Motor Freight, Inc., intervening deft.

92. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Oct. 10, 1973.

93. Notice of Appeal to the Supreme Court of the United States filed Oct. 19, 1973, by Bowman Transportation, Inc.

94. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Oct. 19, 1973.

95. Notice of Appeal to the Supreme Court of the United States filed Nov. 5, 1973, by Lorch-Westway Corp., et al.

96. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Nov. 5, 1973.

97. Notice of Appeal to the Supreme Court of the United States filed Nov. 9, 1973, by United States of America and Interstate Commerce Commission, defendants.

98. Copy of Clerk's letter transmitting filed copy of Notice of Appeal to other parties, filed Nov. 9, 1973.

INDEX TO TRANSCRIPTS

Document No.	Description of Document
1.	Court Reporter's Transcript of hearing held before the Honorable John E. Miller, Senior District Judge, on November 1, 1972, filed Feb. 5, 1973.

2. Court Reporter's Transcript of hearing held before the Honorable Pat Mehaffy, Honorable John E. Miller and Honorable Paul X Williams on July 24, 1973, filed Oct. 19, 1973.

INDEX TO BRIEFS

Document No.	Description of Document
1.	Initial Brief of Plaintiffs and Intervening Plaintiffs, filed Feb. 15, 1973.
2.	Brief of Bowman Transportation, Inc., filed Apr. 18, 1973.
3.	Brief of Lorch-Westway Corporation, et al., Defendants-Intervenors, filed May 8, 1973.
4.	Exhibits to Brief of Lorch-Westway Corporation, et al., Defendants-Intervenors.
5.	Brief of Intervening Defendant, Red Ball Motor Freight, Inc., filed May 10, 1973.
6.	Brief of Johnson Motor Lines, Inc., filed May 15, 1973.
7.	Exhibit No. 1 to Brief of Johnson Motor Lines, Inc., Intervening Defendant, filed May 15, 1973.
8.	Joint Brief of the United States of America and the Interstate Commerce Commission, filed June 1, 1973.
9.	Appendix to Joint Brief, filed June 1, 1973.
10.	Reply Brief of Plaintiffs and Intervening Plaintiffs, filed July 16, 1973.

INDEX TO ABSTRACTS OF EVIDENCE

Document No.	Description of Document
1.	Volume I, Abstract of Evidence on Behalf of Bowman Transportation, Inc., Jones Truck Lines, Inc., and Johnson Motor Lines, Inc., before the Interstate Commerce Commission in Herrin Transportation Company, Docket MC-1124, filed Nov. 12, 1973.
2.	Volume II, "
3.	Volume III, "
4.	Volume IV, "
5.	**Volume V,** "
6.	Volume VI, "
7.	Volume VII, "
8.	Volume I, Joint Abstract of the Evidence Presented by or Specifically Relating to Public Witnesses Supporting the Ten Applications as Prepared by Certain Protestants and Certain Applicant-Protestants before the Interstate Commerce Commission in Herrin Transportation Company, MC-1124 (Sub No. 206), filed Nov. 12, 1973.
9.	Volume II, "
10.	Volume III, "
11.	Volume IV, "

12. Joint Abstract of the Evidence Presented by Applicants as Operating Testimony as Prepared by Certain Protestants and Certain Applicant-Protestants before the Interstate Commerce Commission in Herrin Transportation Company, MC-1124 (Sub No. 206), filed Nov. 12, 1973.

13. Joint Abstract of the Evidence Presented by Protestants as Prepared by Certain Protestants and Certain Applicant-Protestants before the Interstate Commerce Commission in Herrin Transportation Company, MC-1124, Sub No. 206, filed Nov. 12, 1973.

14. Joint Abstract of the Evidence Presented by Applicants in Rebuttal to Evidence of Protestants as Prepared by Certain Protestants and Certain Applicant-Protestants before the Interstate Commerce Commission in Herrin Transportation Company, MC-1124 (Sub No. 206), filed Nov. 12, 1973.

APPENDIX V

The Report and Order Recommended by Gerald E. Jessup and Edward E. Kobernusz, Hearing Examiners, in Herrin Transportation Company, Extension—Atlanta, Georgia, served November 19, 1969.

INTERSTATE COMMERCE COMMISSION
Served November 19, 1969

Notice to the Parties

Exceptions, if any, must be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions. If the recommended order becomes effective as the order of the Commission, a notice to that effect, signed by the Secretary, will be served.

No. MC-1124 (Sub-No. 206)[1]

HERRIN TRANSPORTATION COMPANY
EXTENSION—ATLANTA, GA.

Decided

In each proceeding public convenience and necessity found not shown to require operation by applicant in interstate or foreign commerce as a common carrier by motor vehicle of general commodities, with exceptions, over the routes, or between the points and territories described in the respective applications. Applications denied.

Maurice F. Bishop, John P. Carlton, William P. Jackson, Jr., James B. Blair, W. T. Brunson, William A. Chestnutt, A. Alvis Layne, Kim D. Mann, R. W. Collinsworth, Donald E. Cross, Douglas Faris, Leroy Hallman, Ralph W. Pulley, Jr., William E. Livingstone, III, Carl L. Phinney, Claude N. Knox, Donald B. Lockridge, Charles D. Mathews, David Crockett, Jerry Prestridge, Robert S. Richard, Samuel W. Taylor, Thomas G. Sloan,

[1] This report also embraces: (1) No. MC-2202 (Sub-No. 273), Roadway Express, Inc., Extension—New Orleans, La., (2) No. MC-2229 (Sub-No. 132), Red Ball Motor Freight, Inc., Extension—Atlanta, Ga., (3) No. MC-11207 (Sub-No. 233), Deaton Truck Line, Inc., Re-entitled Deaton, Inc., Extension—Dallas, Tex., (4) No. MC-18088 (Sub-No. 36), Floyd & Beasley Transfer Company. Inc., Extension—Dallas, Tex., (5) No. MC-59680 (Sub-No. 147), Strickland Transportation Co., Inc., Extension—Atlanta, Ga., (6) No. MC-76177 (Sub-No. 304), Baggett Transportation Company Extension—Dallas, Tex., (7) No. MC-94201 (Sub-No. 56), Bowman Transportation, Inc., Extension—Dallas, Tex., (8) No. MC-106401 (Sub-No. 18), Johnson Motor Lines, Inc., Extension—Dallas, Tex., and (9) No. MC-111231 (Sub-No. 67), Jones Truck Lines, Inc., Extension—Atlanta, Ga.

and *William O. Turney* for applicants. and for certain of the applicants as protestants to other applications.

M. Ward Bailey, Lennox O. Boyles, Clifford E. Hillerby, Leon E. Ledford, Drew L. Carraway, John S. Fessenden, James N. Clay, III, Morris G. Cobb, S. Earl Dove, James H. Epps, III, Charles L. Ford, Jr., Robert W. Gerson, S. E. Somers, Jr., Charles O. Gillogly, W. F. Goodwin, Wentworth E. Griffin, Stephen L. Grossman, G. F. Gunn, Jr., B. W. Latourette, Jr., John C. Henderson, Rollo E. Kidwell, W. C. Mauldin, Lewis B. Doggett, J. E. May, James W. Nisbet, Ed White, Richard M. Gleason, V. R. Oldenburg, Sol H. Proctor, John M. Records, R. J. Reynolds, Jr., R. J. Reynolds, III, Lloyd M. Roach, Phillip Robinson, Dan Felts, Clifford E. Sanders, John Schwab, Paul M. Daniell, Alan E. Serby, Keith Y. Sharpe, Phineas Stevens, F. T. Stroud, Robert E. Tate, Eugene K. Walburn, Guy H. Postell, Harold G. Hernly, Harold G. Hernly, Jr., and *Richard A. Bishop* for protestants.

REPORT AND ORDER

Recommended by Gerald E. Jessup and Edward E. Kobernusz
Hearing Examiners

Opening Statement:

Each of the ten applicants herein filed an appropriate application to extend its motor common carrier authority for the transportation of general commodities (with exceptions) so as to permit additional operations in a portion of the country generally lying between Atlanta, Ga., Birmingham, Ala., and Pensacola, Fla., on the east and Houston, Dallas and Fort Worth, Tex., on the west. The extent of the authority sought varies with each applicant. In general, however, the four Texas or

southwestern applicants, namely Herrin,[2] Red Ball, Strickland, and Jones, seek to extend their operations to Birmingham and Atlanta on the east; the five southern carriers, namely Deaton, Floyd & Beasley, Baggett, Bowman, and Johnson are seeking to extend their authority into the Southwest, primarily to Texas points (Bowman also seeking extension to Kansas City, Mo., and Topeka, Kans.); and Roadway proposes to extend its authority from Montgomery, Ala., to Pensacola, Fla., and New Orleans and Baton Rouge, La. Regular route authority is sought by all but one of the applicants. Each applicant proposes to tack the authority sought with its present operations.

There is set forth in Appendix A the name, headquarters, docket number, application filing date and authority sought (as amended) for each of the ten applicants. In addition there is included in this appendix information concerning each of the applicant's present authority, motor vehicle equipment, terminal facilities and financial statements.

The applicants are established interstate motor common carriers of general commodities having been engaged in such operations under authority of this Commission for many years. Each operates a sizable fleet of trucking equipment, maintains terminals in the territories served, has an active safety program, and is capable of performing the operations proposed.

Hearing

The applications were referred to the examiners for hearing and the recommendation of appropriate orders. Because of the

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[2] Herrin Transportation Company was merged into McLean Trucking Company, effective October 1, 1969, pursuant to authority in No. MC-F-10121, McLean Trucking Company—Control and Merger—Herrin Transportation Company (not printed), decided August 5, 1969.

extensive nature of the hearings proposed and the burdens that would be imposed upon counsel, and the parties by a continuous hearing session, both applicants and the protestants sought and were permitted to have the hearings scheduled at intermittent intervals. By agreement of the parties 3 separate sessions of the hearings were held at each Washington, D. C., Atlanta, Ga., and Dallas, Tex., and single sessions at Houston, Tex., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., during a period extending from March 1966 to August 1967. In all there were 149 days of hearing of which 113 days were devoted to the applicants' presentation of evidence and 36 days to the protestants' presentation. The transcript of testimony covers 23,423 pages and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of applicants including 933 public witnesses who are engaged in shipping or receiving freight by motor carrier.[3] Many of the public witnesses testified on behalf of more than one applicant. The total number of public witnesses called by each carrier and the number supporting the various carriers is as follows:[4]

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[3] Included are 12 motor common carrier witnesses testifying on behalf of certain of the applicants concerning the need for additional connecting line services which would be available through the grant of the particular application supported.

[4] Appendix B is a listing of the public witnesses appearing on behalf of applicants, numbered in the order of their appearance and containing the name of the company represented and the applicants supported.

Carrier	Witnesses Presented[5]	Witness Support
Herrin	86	116
Roadway	97	123
Red Ball	130	171
Deaton	33	58
Floyd & Beasley	19	41
Strickland	103	134
Baggett	38	52
Bowman	192	363
Johnson	105	256
Jones	130	222

Appearances were entered on behalf of a total of 66 protestants although 6 subsequently withdrew their opposition. Forty-eight of the protestants offered evidence in support of their opposition through the testimony of 62 witnesses and numerous exhibits.[6]

Public Witnesses

General: The ten applicants, as a group, operate over a wide area extending from Colorado, New Mexico, and Texas on the west and southwest to the eastern seaboard from Florida to New England, and from the Gulf Coast on the south to Wis-

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[5] Where more than one counsel conducted direct examination of the witness credit is given to the carrier represented by the lead counsel presenting the witness.

[6] The evidence on behalf of protestants is set forth in Appendix D.

consin and the Canadian border on the north. Indeed the 933 public witnesses supporting these applications came from the four corners of this expansive territory, including two from Canada. To facilitate consideration of their evidence the witnesses have been grouped into a number of categories, in general according to the type of commodities they handle. The grouping itself is somewhat superficial, especially as some of the witnesses may handle freight in more than one category. The important point is that their testimony has been considered and evaluated. It is set forth in Appendix C.

A review of the testimony of these 933 public witnesses discloses that a substantial number of them had made no investigation of existing motor carrier transportation services available to handle their shipments. Many who supported an applicant for single-line service into its proposed new territory had not tried all of the existing single-line services available, nor had they used the joint-line service which that applicant had available to serve them. Many of the receivers of freight testifying as to their need for the proposed services of one or more of the applicants, heretofore had left the routing and selection of carrier services entirely up to their suppliers. Some stated that they would have no objection to trying the existing services now that they knew of them. Others indicated that while they were aware that other services were available they had made no effort to use them; and some stated that they had no interest in using a carrier that had not solicited their traffic, contending that the burden is upon carriers to inform shippers of their services through personal solicitation. The Commission has never accepted this view.

The failure of these shipper witnesses to investigate and try the existing carrier services available to them, or to show that such action would be useless as a means of meeting their transportation needs, reflects adversely upon the weight to be given their testimony. Certainly it indicates that the problems they

were experiencing with respect to their transportation services were not sufficiently important or serious to spur them to seek other carrier service prior to being requested to testify in this proceeding.

Aside from an indication of the nature and volume of their traffic, the testimony of such witnesses, who have no knowledge of the existing transportation services available to them and who are not in a position to testify as to the inadequacies of such service, is neither sufficiently probative nor substantial enough to be of value in determining whether the present or future public convenience and necessity require the additional services proposed.[7]

Public Need—Quantum of Service: Many of the shipper witnesses have experienced growth in their business in line with the population, economic, and industrial growth in the area involved in these applications, and for the immediate future they anticipate a continuing increase in the amount of freight they ship or receive. The transportation services and facilities in the area likewise have grown to meet these needs and the existing carriers have very substantial investments for the maintenance of such service. Appendix C discloses that these witnesses ship or receive a wide variety of commodities and that with but few exceptions they have a number of carriers of services available to them.

In analyzing the evidence of the public witnesses from a commodity standpoint, the only need shown for additional service relates to less-than-truckload shipments of commodities requiring refrigeration (including meats, candy and pharmaceuticals). Truckloads of these shipments generally are transported by carriers specializing in refrigeration service, or they move

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[7] *Warren Transport, Inc., Common Carrier Application*, 69 M.C.C. 241, 246 (1956); *Miller Extension—Poughkeepsie, N. Y.*, 61 M.C.C. 631, 637 (1953).

in private carriage. The handling of less-than-truckload freight of this type, however, poses a number of practical problems especially to general freight carriers, and many of them (including some of the applicants and protestants) do not offer that type of service, or have very limited facilities for handling such traffic. Some of the witnesses testifying as to their need for this service have not requested it from the general freight carriers serving their cities even though they provide it. One witness supporting an application on the basis of a proposed daily pickup of its less-than-truckload shipments requiring refrigeration, previously had made arrangements with one of the protestants whereby that carrier would pickup its less-than-truckload shipments once a week rather than daily, and that service proved to be mutually beneficial. It is possible that with a more cooperative effort and better communication between the shippers and carriers the existing carriers can answer the needs for this service and eliminate or minimize difficulties in providing it. In any event, the evidence of the need for additional service in this limited area is neither sufficient to support a grant of general commodity authority nor adequate to make a determination that the volume of such freight will sustain that type of operation by one or more of the applicants.

The evidence further shows that shippers of commodities requiring the use of flat-bed trailers may not always be able to obtain such equipment immediately upon request. However, there is no indication of unreasonable delay and no showing that the existing carrier services cannot handle the volume of freight available with reasonable dispatch.

Geographically, there is a multiplicity of single-line and joint-line service between major points within the areas involved in these applications. As noted in other portions of this report some of the applicants now offer single-line service between points which other applicants are here seeking authority to institute new single-line services; and the joint-line services avail-

able between these applicants virtually blanket the area insofar as any substantial volume of freight may be involved.

Single-line motor carrier operations by general commodity carriers between Atlanta and or Birmingham on the one hand, and, on the other, Dallas, include those of ETMF, Roadway, Gordons, Transcon, Braswell, Mercury Freight, and Herrin (now merged into McLean). Between Atlanta and or Birmingham on the one hand, and, on the other, Houston most of these same carriers and Ryder are authorized to operate. Between Atlanta and or Birmingham on the one hand, and, on the other, Jackson, Miss., such carriers as Deaton, Dixie, Campbell Sixty-Six, Braswell, West, and Ryder operate. Between Atlanta and or Birmingham and New Orleans Johnson, Dixie, Baggett, West, Deaton, and Campbell Sixty-Six operate. Between Atlanta and or Birmingham, on the one hand, and, Kansas City on the other, single-line service is offered by Watson-Wilson, T.I.M.E., Gordons, Campbell Sixty-Six, and Transcon. Between Mobile and various points in Mississippi, Louisiana and Texas there are such carriers as Red Ball, Herrin, West and Johnson. Between Atlanta and or Birmingham on the one hand, and, on the other, Oklahoma City and Tulsa there are such carrier services as T.I.M.E. and Transcon. These carriers also are authorized to serve many additional intermediate points and to provide single-line services as heretofore stated between substantially all the major cities and communities in the area involved in these applications particularly in the States of Alabama, Mississippi, Louisiana, Arkansas, and Texas. Other single-line services are available between the Houston and Dallas areas on the one hand, and various points in Louisiana, Mississippi, and Arkansas on the other. In addition, it will be observed from Appendix D that there are numerous single-line services between points in the east and midwest on the one hand, and, on the other, the Dallas, Houston, New Orleans, Baton Rouge, Little Rock, Memphis, and Gulf Coast areas.

The applications of three of the applicants admittedly represent efforts by them to keep pace with any realignment of existing motor carrier operational patterns, it being their position that if the Commission grants any of the applications, theirs also must be granted in order for them to survive and remain viable competitive carriers in the area. Two of these applicants on brief urge that the Commission find that the evidence fails to show a need by the shipping public for the services of any of the applicants, and further any need for motor carrier service expressed by the public witnesses can be met by full utilization of existing carriers including those authorized to perform additional services in the involved territory following the closing of this record. We believe that the evidence fully warrants such a finding.

Public Need—Quality of Service: Most of the public witnesses supporting the applications expressed varying degrees of dissatisfaction with their existing services. Their complaints embrace poor tracing and claim service, interline difficulties, loss and damage, refusals to handle shipments, inconsistent and excessive transit time, poor pickup service, and desire for single-line service. The entire scope of these complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use. For example, witnesses supporting one particular applicant often complain of poor service by other applicants as well as by protestants and other carrier services. The record discloses that many of the witnesses supporting an applicant for an extension of its operation have not used the service of the applicant, either in single-line or in joint-line service although the applicant is authorized to serve the witness's shipping or receiving facility. Some of these major complaints are discussed under separate portions of this report.

The complaints of the supporting witnesses with respect to loss and damage, claim handling, and tracing problems, are, in fact, minimal. The crux of such complaints is that single-

line service minimizes these difficulties, and with that conclusion there appears to be little argument. These are problems common to all carrier services and which carriers struggled to overcome. The evidence does not warrant a conclusion that any of the applicants will perform a materially superior service in these respects than the other carriers operating in a particular area.

The record contains evidence of carriers refusing or failing to perform properly under their certificates. Included in such failures are some of the applicants as well as some of the protestants. These incidents include what appears to be action in the nature of an unauthorized temporary embargo in an effort to overcome some traffic imbalance or remedy an equipment distribution problem; some involve a freight selectivity by a direct suggestion that the shipper use other carriers or by various tariff restrictions or delayed pickup service. While these practices are not widespread and some only temporary, none of them is to be condoned. To the extent that carriers may be failing properly to perform under their certificates and under the terms of section 216(b) of the Interstate Commerce Act, remedies are available other than the granting of authority to more carriers. We do not believe that authorization of additional carrier services in a area served by an adequate number of carriers fosters sound economic conditions in transportation; nor is it the only way to minimize the service failures and improve service to the public. Where complaints of these failures have been made to the carriers or proper authorities, remedial action has been taken.

The evidence does not warrant a finding that the general quality of service of the applicants, or any of them, is sufficiently superior to that of the existing carrier services to support a conclusion that the public convenience and necessity require the operation proposed.

Schedules—Transit Time[8]

One of the primary points sought to be established by applicants as a basis for granting their respective applications is that the shippers and receivers of freight moving to, from, or between points in the areas here in question are dissatisfied with the length of time it takes for the transportation of their goods and with the inconsistency of the transportation services used. Faster and more dependable service will enable them to reduce costly inventories, better maintain production schedules, and to meet customer demands. Certainly shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities.

The applicants propose certain service standards or schedules for the operations they intend to offer the public under their respective applications.[9] Without restating these various pro-

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[8] Throughout the hearing the terms "elapsed time from billing date" or "between billing dates" were used when evidence was presented pertaining to the time that freight was in transit as determined by delivery receipts showing the carrier's freight bill date and date of delivery of the freight to the consignees or connecting carriers or the latter's billing date. Witnesses for the carriers testified that in most instances the billing date would be the actual date the freight was received for transportation. For the purposes of uniformity Saturdays, Sundays and holidays are excluded from the elapsed calendar days unless the freight was actually picked up or delivered on one of those days. It is recognized that to some extent this practice distorts the performance records of the carriers who do conduct some operations over the road on weekends and holidays. Throughout this report unless otherwise indicated reference to schedules or transit time embraces this concept and also refers to less-than-truckload freight.

[9] Deaton, an irregular route carrier, is not proposing scheduled service. However, the testimony indicates that on the basis of a contemplated minimum volume of freight being available, shippers could reasonably count on second or third day service between most of the points proposed to be served and first day service between some of the nearer points.

posals in detail the applicants here are proposing in general first and second day service between Atlanta and Birmingham, on the one hand, and, on the other, the Mississippi, Arkansas, Louisiana, Texas and Missouri points involved in these applications. Some of the applicants also offered evidence of schedules they propose between points on their existing routes and points on the proposed new routes.

A great deal of evidence was offered by certain of the applicants intending to show that the schedules they propose are feasible and that they are capable of performing such service for the public. Protestants on the other hand testified that certain of the applicants' schedules are not feasible and used the applicants' own evidence as well as other evidence of their operations to show that the actual operations of applicants over similar distances in some instances will not support the practicality of some of the schedules proposed. The anomaly of the situation is emphasized by the fact that most of the applicants also are protestants and in some instances one applicant has seriously questioned the feasibility and practicality of the schedules proposed by other applicants.

A major portion of the public witnesses testifying on the behalf of the various applicants voiced some degree of dissatisfaction with the length of time required for the transportation of their shipments or with the inconsistence of the service. Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period be-

tween certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportation service by protestants, applicants, as well as other carriers. They also reflect instances of good service.

Some of the public witnesses acknowledge that their present transportation service is adequate and satisfactory, but testified that if their freight would be delivered consistently on the schedules proposed by the particular applicant they supported it would be an improvement over their existing service. Many of the public witnesses based their support of a particular applicant upon the service schedules proposed, and assuming a high degree of adherence to those schedules.

In many instances a public witness supporting one applicant was critical of the service of other applicants as well as some protestants. The same applicant carrier service has been both praised and condemned by different witnesses from the same locale, and in some instances a witness supporting a particular applicant has been critical of the service he has received from that carrier in the past.

The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of these same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation. Concerned shippers would hardly route their freight from the Carolinas to Dallas by way of Houston as reflected by some of the exhibits when much shorter routings are available; nor would they over

the years fail to specify routing of their shipments for either the single-line or joint-line services available to them. The importance of rapid transit time is questionable for some of the supporting shippers who make a practice of accumulating shipments for certain stores or areas for once-a-week or other periodic shipments. Little weight can be given to the testimony of some of the shippers supporting an applicant for faster transit time when the witness uses a combination of the slower water carrier service from eastern origins to the Gulf Coast and rail or motor service to destination; nor to those witnesses who have not tried the joint-line service of the applicant they are supporting nor have used the service of that applicant to the point it is now authorized to serve.

Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings,[10] the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur.

A study of the many exhibits depicting the service performance of applicants and protestants discloses that in the main the carriers participating in these proceedings are substantial and responsible carriers. They all have substantially the same problems affecting pickups, checking, sorting, billing, and transporting the freight (including operation through break-bulk points as necessary to effect proper loading factors), unloading freight from the line-haul trailers, loading it into delivery trucks, and effecting delivery to the consignees or connecting carriers.

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[10] *Transamerican Freight Lines, Inc.—Purchase (Portion)—Allen Motor Lines*, 59 M.C.C. 695, 722 (decision reversed on other grounds 65 M.C.C. 163).

They all have experienced service failures in their operations. They all also can point to commendable service records.

Operating schedules and procedures are functions of management and are subject to change as economic, technological, and other circumstances and factors may dictate. Although motor common carriers have an obligation to transport the property tendered to them with reasonable promptness and with the exercise of reasonable diligence and care they are not guarantors of schedules. The testimony of the several shipper witnesses who supported certain applicants for their proposed schedules which would be of particular assistance to them in making emergency shipments (such as drugs or repair parts) must be weighed in the light of the practicalities involved. In the face of otherwise normally satisfactory service by existing carriers, demands for emergency service are not a sufficient basis to support a grant of authority to additional carriers.[11]

Notwithstanding the proposed schedules of any particular applicant, the record does not establish that applicants, or any of them, afford in general transportation services which are so superior to those of the existing comparable carrier services available to the shippers as to warrant a finding on that basis that public convenience and necessity require the proposed new services. Stated differently, the transit time studies of the participants in these proceedings, as a whole, and considering the circumstances under which they were made, do not warrant the conclusion that the existing carrier services are not reasonably adequate to meet the real needs of the shipping public.[12] The solution to the instances in which the public has been subjected

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[11] *M & M Fast Freight, Inc., Extension—General Commodities*, 68 M.C.C. 513, 519 (1956).

[12] Cf. *Terminal Transport Co., Inc., Ext.—Birmingham*, 103 M.C.C. 699, 714; *Hancock Trucking, Inc., Ext.—Gulf and West Coast Routes*, 62 M.C.C. 513, 535-536.

to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers.

Single-Line vs. Joint-Line Service

Many of the witnesses support these applications for the purpose of obtaining single-line service in lieu of the multiple line services they are using. Their reasons for desiring single-line service are that it will improve transit time, avoid interchange delays, reduce damage by less handling, and improve claim and tracing experience by providing a single line responsibility.

At present the southeastern applicants interline their freight moving to or from the Southwest at the primary gateway points of Atlanta, Birmingham, New Orleans and Memphis, with some minor connections at such points as Mobile, Jackson, and Shreveport. The southwestern applicants interline their freight moving to or from southeastern and eastern points primarily at Memphis, New Orleans, and Dallas, and to a lesser extent, at Jackson, Shreveport, and Macon. To the extent that they can control or influence the routing of traffic the carriers generally seek to long-haul their interline freight to or from their most distant gateway. Thus the noted gateway points reflect to a significant degree the long-haul terminal points of these applicants, other than Roadway. Under their respective proposals the southeastern applicants seek to break through their existing gateways to Dallas and Houston (and Bowman also to Kansas City), and conversely the southwestern applicants seek to break through their existing gateways to Atlanta and Birmingham.

Starting with the assumption that normally an interchange of less-than-truckload freight adds a day to the time a shipment is in transit, these witnesses favor elimination of that delay. At

times the delay may be longer, especially if the originating carrier encounters difficulty in effecting the interline. They also complain that tracing shipments is more difficult and slower when the origin carrier must attempt to locate shipments through its connecting carriers. The same situation prevails with respect to the handling of claims. Several of the witnesses testified that their products are susceptible to damage through excessive handling and for that reason they desire to have available as much single-line service and to as many points as possible.

A great majority of the supporting witnesses express preference for single-line service and we recognize that in the absence of other factors single-line service has a number of potential advantages and fewer operational problems than joint-line service and normally is more satisfactory. We note, however, that a number of the witnesses favoring single-line service use joint-line service even though single-line service is available. At times this is done in an effort to divide the traffic among the carriers serving the particular shipper. Sometimes it is the result of giving the first carrier arriving all of the freight available regardless of destination as a means of clearing the loading platform. Sometimes it results from a preference of the shipper to use a particular local carrier to originate all of its freight even though there are numerous other carriers authorized to serve the shipper, many offering single-line services. Some of the other witnesses favoring single-line service do not route their freight, leaving it up to their suppliers or others, and some have made no investigation of the services available to them. A number of the witnesses support two applicants, each for single-line service, but have not tried the joint-line services offered by them either together or with other carriers. Such evidence although indicating a possible preference for single-line service is not sufficient to support a grant of additional carrier authority.

Some of the witnesses seek to reduce the number of participating joint-line carriers handling their freight; for example, reducing their service from three line to two line services. Often these witnesses have two-line service available which they have not tried or are not using. Others seek merely a change of the interlining gateway point from one locality to another. In this connection some witnesses want to route their freight over the Atlanta gateway, rather than over the Memphis gateway which they are using, because of purported heavy freight congestion at Memphis. Others wanted to avoid the Atlanta gateway as an interline point because of its purported congestion. The testimony of a number of these witnesses indicates that they were under the impression that the proposal of the applicant which they support would offer a single-line service whereas in fact the service would remain joint line even though the application be granted.

The carrier proposals to some extent involve contemplated improvement of service between smaller towns and communities, on the one hand, and, on the other, the larger supply and distribution centers. Depending upon the particular applicant supported the evidence of many witnesses relate to service between the smaller communities in the Southwest and the distribution and supply centers of Atlanta and Birmingham; or between many of the cities, towns and communities in the East and Southeast and the supply and distribution centers of Dallas and Houston. As an example Red Ball, Herrin and Jones serve many of the smaller communities in the Southwest and seek authority which will permit singleline service between these communities and primary supply and distribution points of Atlanta and Birmingham. On the other hand, Johnson serves many communities in the East and Southeast and describes the basic purpose of its application as being to provide an overhead single-line service between those areas and the primary supply and distribution points in the Southwest, working closely with connecting carriers on joint-line traffic. Bowman and Roadway

also suggest that their present broad territorial coverage would provide new single-line services for many shippers and to many areas.

The result is that these applications involve the extension of operations by some applicants into areas normally served by other applicants, as well as by numerous other carriers including protestants. For example, Roadway (as well as a number of the protestants) now provides single-line service between Atlanta and/or Birmingham, on the one hand, and, on the other, Dallas, Fort Worth, Houston and other Texas points. The other applicants are here seeking such authority. Applicant Johnson now provides single-line service between Atlanta and east coast points, on the one hand, and, on the other, such points as Mobile, Pensacola and New Orleans.

Applicant Roadway here seeks authority to perform that service. Applicants Johnson, Baggett and Deaton now provide single-line service between Atlanta and/or Birmingham, on the one hand, and, on the other, New Orleans, which authority applicants Herrin, Red Ball and Strickland would obtain under their proposals. Applicant Bowman now provides single-line service between Atlanta and Birmingham and applicant Deaton between Birmingham and certain Mississippi points. Applicants Jones, Strickland and Red Ball here seek such authority between Atlanta and Birmingham, and applicants Bowman, Johnson, Red Ball and Strickland between one or both of those cities and certain Mississippi points.

While these examples do not purport to represent all of the instances in which one applicant seeks authority to duplicate the single-line service of another applicant, they will suffice to illustrate the fact that in many instances witnesses supporting one applicant for single-line service have available the single-line services of other applicants. In addition there are single-line services of a number of protestants and other carriers. For

example, in addition to applicant Roadway providing single-line service between Atlanta and Dallas, there are also such other carriers as ETMF, Gordons, Transcon and T.I.M.E.[13] Between Atlanta and Houston in addition applicant Roadway ETMF, Ryder and Transcon provide single-line service.[13] Between Atlanta or Birmingham and Jackson, Miss., single-line service is provided by Dixie, Deaton, Ryder, West (from Birmingham only), Campbell Sixty-Six, Braswell, and Gordons although the latter's route is circuitous. Between Birmingham and Baton Rouge single-line service is provided by Ryder, Campbell Sixty-Six, Mercury Freight and Braswell (subsequent to the hearing). There are many other single-line services available between other points involved in these proceedings as for example, Transcon, Watson-Wilson, Gordons and Campbell Sixty-Six between Kansas City and Atlanta; Transcon and T.I.M.E. between Atlanta in the Southeast and Little Rock, Tulsa and Oklahoma City; ETMF and Ryder between Atlanta or Birmingham and Shreveport; and Mason & Dixon, Consolidated Freightways, T.I.M.E., Transcon, ABF, Viking, Jack Cole and ET&WNC between points in the East and Midwest, on the one hand, and, on the other, various points specified in these applications.

A number of the witnesses testifying in support of single-line service were from small communities located some distance from the larger production and distribution centers. The plan for less-than-truckload service at these communities generally calls for operation through at least one break-bulk terminal even though the service be single-line. This is dictated by the economic practicalities of operations and understandably involves some delay in transit. Most of these witnesses admittedly use a substantial amount of joint-line service to reach many points and areas throughout the country. Their interests in

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[13] Since the close of the hearing Herrin, Braswell and Mercury Freight also obtained authority to operate between Atlanta and Dallas and Atlanta and Houston.

these applications is to obtain as much single-line service as possible.

The evidence also discloses some instances in which carriers authorized to perform a single-line service between certain points, in practice interline the freight with other carriers. This is done by some of both protestants and applicants for various reasons but primarily because the small volume of freight involved does not economically justify the operation. In general there are smaller local carriers operating between the normal distribution terminals of the line-haul carriers and the particular smaller points involved, performing a daily service. Also in some instances one of the applicants performing an intensive service in a particular area has been used in joint-line service by other carriers with authority to serve the particular point in question single-line. It is reasoned that the public is served better by interlining the freight to these local carriers who perform a daily service rather than holding it to accumulate a sufficient volume to warrant single-line service. It is also reasoned that this practice is beneficial in enabling the local carrier to have a sufficient volume of freight to maintain its operations. Generally, the volume of traffic moving to or from a point dictates the service which can be offered profitably.

We recognize that carriers must operate in an efficient and practical manner in order to be able to provide a service capable of meeting the transportation needs of the public generally. The extent to which carriers may hold out to the public a single-line service but render a joint-line service is not here in issue. In the event authorized carriers are failing to perform properly under their certificates and pursuant to the provisions of the Interstate Commerce Act[14] procedures other than authorizing additional carrier services between the points are available to remedy that situation. Nevertheless the evidence

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[14] 49 U.S.C. 316(b).

of this practice is relevant and is given consideration in reaching our conclusions.

The key to applicants' ability to perform and sustain the services proposed for witnesses at many of the smaller towns lies primarily in developing a volume of freight moving between the major cities, namely between Atlanta and Birmingham in the Southeast and Houston, Dallas, Fort Worth, Tulsa, and Kansas City in the Southwest and Midwest. As has been noted single-line services are now available between many points in this area, particularly between the larger cities, and in addition there are available many connecting line services to meet the needs of the shipping public, including the joint-line services available between these applicants. To the extent the testimony of the witnesses is based largely upon the proposition that to the disregard of other considerations single-line service should be made available to them we need only refer to the position of the Commission as stated in other cases that the national transportation policy does not tolerate the proposition that all shippers at all points are entitled to single-line motor carrier service.[15] This is particularly true in a proceeding embracing the extensive geographical area of these applications, both individually and collectively.

The evidence fails to establish a need for the additional single-line services as proposed by the applicants, or any of them, in these proceedings. Neither does it warrant the realignment of traditional traffic patterns and competitive relationships among the existing carrier services as may result from the proposals. To the contrary, the conclusion is warranted that the addition of more single-line services to transport small less-than-truckload shipments between the smaller communities and the production and distribution centers will result in dilution

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[15] *Hancock Trucking, Inc. Ext.—Gulf and West Coast Routes*, 62 M.C.C. 513, 535.

of the freight available for the existing carriers and may adversely affect the quality of services of all of the carriers now operating in the area.

Pickup Service

An appreciable number of the witnesses supporting certain applicants complain of poor pickup service by the motor carriers being used. These complaints embrace the applicant carriers as well as protestants and other carrier services. In some instances their difficulties appear to result from their limited dock facilities or their location in congested areas with little or no space available for carriers to await their turn. These difficult physical conditions require special handling, particularly where unreasonable delay of the equipment and driver may be involved or undesirable or unlawful traffic congestion may result. Some shippers and carriers have solved this difficulty by scheduling pickups as well as deliveries when such conditions exist.

Some witnesses complain that certain carriers which serve them have removed them from their regular daily pickup schedules making it necessary to call the carriers for pickup. The evidence discloses that the carriers normally make daily pickup calls on their regular shippers, but if their service is being used only sporadically, pickups are scheduled only upon a specific call from the shipper. That practice appears adequate and economically sound.

Some of the shippers complaining of unsatisfactory pickup service by one carrier have adequate and satisfactory services by other carriers which often are their preferred carrier services. Some of these complaints are without substance, and some involve isolated pickup failures which may occur to any carrier. In some instances the complaining witness has an

early closing hour for his platform employees making it difficult to effect the pickup particularly if the call for service should be late; and some of the witnesses complain of failure of their carrier services to make more than one pickup a day at their place of business.

Some of the complaints of poor pickup service really relate to other basic difficulties the solution of which lies in procedures other than authorizing additional general freight carrier services as here proposed. For example, shippers of furniture have complained that they have experienced difficulty in getting general freight carriers to pick up their shipments especially when destined to off-line points. The carriers explain their reluctance to pick up such shipments because of the difficulty they experience in finding a connecting carrier willing to accept the shipment for transportation to destination. Other shippers of articles which may be regarded as somewhat undesirable freight experience difficulty in getting prompt pickups. Often these difficulties can be overcome by cooperation between the shippers and the carriers and an understanding of the practical problems involved in handling such freight. Of course shippers or receivers of such articles are enthusiastic supporters of applicants who promise to give them a regular and consistent scheduled service for their undesirable freight.

Unquestionably the record contains instances of poor pickup service by both applicants and protestants. Some of it occurred during a period when one of the protestants was merging into it another carrier operating in the area here involved and consolidating the terminal facilities of the two carriers. In this record the pickup service of the same carrier (including that of both applicants and protestants) has been criticized as well as praised by different witnesses. A number of the witnesses testified that their pickup service improved after they complained to the appropriate carrier officials. Their experience suggests and warrants the conclusion that the existing carriers

are not apathetic to the shortcomings of their services and are responsive to the needs of the shippers as well as the exigencies of competition.

Adverse Affect on Existing Carrier Services

The interests of existing carrier services must be carefully considered in determining whether additional grants of operating authority are warranted. Normally existing carriers should have an opportunity to show that they can render adequate service and also the opportunity to transport all of the traffic they can handle adequately and efficiently in the territory they are authorized to serve without the competition of new operations.[16] While special circumstances at times may warrant departure from the norm as stated we find no reason here for such departure. The existing carrier services have substantial investments in their motor carrier properties and have increased their facilities and services with the growing needs of shippers in the areas they serve. In some of the areas here involved certain protestants have received additional operating authority since the close of this hearing as we have noted.

The very serious adverse affect which these 10 extension applications collectively may have upon the existing carrier services is noted in Appendix D. It is difficult to predict accurately the effect that approval of any one of the applications may have upon any single existing carrier, but the evidence leaves little doubt that some of the smaller carriers likely could not survive if certain of the applications were granted. For example, Holloway which receives 71 percent of its operating revenue from one account that is here supporting one of the applicants for service duplicating that of Holloway, is faced with a pos-

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[16] *Eazor Exp. Inc. Extension—Alternate Routes*, 89 M.C.C. 345, 351 (1961); *Garrett Common Carrier Application*, 83 M.C.C. 795, 798 (1960).

sible diversion to that applicant of all of its westbound and most of its eastbound freight notwithstanding the admission of the shipper that Holloway's service is adequate and satisfactory. The entire operations of Red Line would be seriously threatened by the grant of these applications; in fact a grant of the Strickland application alone could put Red Line out of business. United, operating only between Atlanta and Birmingham, is completely vulnerable to diversion.

Gordons' traffic is exceedingly susceptible to diversion from these applications as noted in Appendix D, page 21, including virtually all of its traffic at certain of its terminals. Overall 54 percent of all shipments handled on its entire system in 1966 would be subject to diversion, representing 54.6 percent of its tonnage and 58.5 percent of its operating revenue. Braswell's operations threatened by these applications represent over 25 percent of its tonnage producing about 16 percent of its operating revenue ($1.98 million). Fifty-two percent of the combined revenues of Jack Cole and Dixie are involved in these proceedings as are 12 to 14 percent of the operating revenues of MR&R. A major portion of the freight handled by Campbell Sixty-Six would be subject to diversion including freight moving to or from each of its terminals.

Further reviewing Appendix D it will be observed that Ryder's operations (not including those of Harris) subject to diversion represent approximately $7.5 million of its revenue per year; Transcon approximately $13 million; Herrin $2.7 million; Mason & Dixon $2 million; Viking $2.8 million; Watson-Wilson $1 million; Consolidated Freightways $1.9 million; T.I.M.E. $8 million; ABF $1.6 million; Eagle $1 million; Deaton $3 million; and Floyd & Beasley and Southwestern Transportation about $215,000 each. Approximately 8 percent of Roadway's total shipments are subject to diversion by these applications and a large portion of the interline freight of Pilot at its Atlanta terminal would be affected. The evidence shows

that from 200,000 to 300,000 pounds of freight transported daily by GFA is subject to diversion. Approximately 18 million pounds of the freight handled by Mercury Freight in 1966 would be subject to diversion as would over 36 million pounds handled by A&H and 270 million pounds by ETMF. Other trucking companies estimate possible diversion of their freight by these applications as follows: Ellis Trucking Co. 2 million pounds per month; Southern Forwarding Co. 168,000 pounds per month; Mid-South Transports over 100,000 pounds per month; ET&WNC approximately 24 million pounds per year; Mercury MX approximately 3.5 percent of its operating revenue; Mercury Motors approximately $23,000 in revenue per year; and Wilkerson Freight Lines from 45 to 60 percent of its total freight. Other protesting carriers have freight subject to diversion which is important to their operations.

Not only is the possible diversion of such large quantities of freight posed by these applications but they also involve possible adverse affects through a further imbalancing of the traffic flow of these carriers. While the evidence does indicate a few isolated areas involved in these applications where a grant of a particular application may not seriously affect the existing carrier services, it cannot be found as to those areas that the proposed additional services are required by the present or future public convenience and necessity.

The overall affect of these 10 applications upon the existing carrier services is reflected by an opening statement of counsel on behalf of two of the applicants noting that these applications propose significant alterations in the interline relationships among carriers, in competition for existing traffic, and in the pattern of motor carrier service in the South and Southeast. The granting of any or all of the applications will affect (1) service to the public in a broad and economically important area of the country, and (2) the efficiency and economy of the motor carrier operations conducted by applicants and other carriers

in this area. While fully aware of the need to avoid monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public, yet this need must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services.

The evidence warrants the conclusion that the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services.

The Roadway Application

The Roadway application differs from the others in that it does not involve operations between the Atlanta-Birmingham areas, on the one hand, and the Houston-Dallas areas, on the other. Roadway already holds that authority. Instead, Roadway seeks to extend its present network of routes south from Montgomery to Pensacola, Fla., Mobile, Ala., and New Orleans and Baton Rouge, La., serving all intermediate points along the routes (restricted as noted in Appendix A-II).

In No. MC-F-10178, *Roadway—Control—West Bros.* (not printed), decided June 26, 1969, the Commission approved Roadway's application to control West Bros., a protestant in this proceeding, with the understanding that an application to merge the two carriers will be filed as the tax writeoff advantages have been depleted. The West operating authority includes substantially all of the authority sought by Roadway with the exception of authority to serve Pensacola, Gonzales, and Cantonment, Fla., intermediate and off-route points between New Orleans and Baton Rouge, especially Plaquemine, and authority

to operate over a route between New Orleans and Baton Rouge. The latter point is included in West's certificate No. MC-3009 (Sub-No. 57), dated September 26, 1969 and is to be served by routes extending from Memphis, Jackson and Hattiesburg, but not from New Orleans. Roadway urges that it is vitally interested in prosecuting its application to the extent the authority sought is not duplicated by that of West Bros.[17]

Some of the witnesses supporting the proposed new service to or from North Florida points ship or receive very substantial quantities of freight. Without attempting here to again review the evidence of each of these witnesses it is sufficient to note that the north Florida points are served by a number of carriers including GFA, Mercury Motor Express, Mercury Freight, MR&R, Howard Hall, Herrin, Johnson and Bowman. Single-line service is available to the eastern and northeastern areas of the country and for the most part it seems to be reasonably satisfactory to the witnesses who testified. In many instances the witnesses had not tried some of the services available to them and their support of the Roadway application was based primarily upon a desire for as much single-line service as could be made available and upon their preference for the Roadway service.

Between the midwest States and the north Florida points the transportation service is mostly joint line. Again the complaints against the existing services involve extensive transit time, difficult tracing on multiple line hauls, delays and damages resulting from interline, and most especially a desire for single-line service with its natural advantages. However, there are an abundance of joint-line services available and the freight moving to or from the north Florida points is very important to the car-

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[17] The creation of duplicate operating authorities in carriers under a common control is not normally approved. *Dealers Transport Co. Extension—Willow Run*, 48 M.C.C. 199; *Fleet Lines, Inc.—Control—Osbourn Trucking Co.*, 58 M.C.C. 748.

riers serving that area. For instance, Howard Hall in 1966 had operating revenues of about $3.77 million of which $405,000 was derived from freight moving between its Birmingham and Pensacola terminals. Revenues on freight moving between its Atlanta and Pensacola terminals constituted 12 percent of the 1966 revenue of MR&R Trucking Company, and 14 percent of its revenue during the first five months of 1967. In 1966 Mercury Freight interlined 1,494 shipments weighing 2.4 million pounds to Roadway at Birmingham and received from Roadway 7,588 shipments weighing almost 5 million pounds, most of which were moving to or from its Pensacola and Mobile terminals. GFA interlines a very large amount of freight with Roadway at Atlanta, much on a trailer exchange basis. Its only difficulty in handling such freight has been an occasional equipment shortage on the part of Roadway at Atlanta.

These carriers hold out a first day service between Pensacola, on the one hand, and Atlanta and Birmingham, and meet that holding out for a very substantial portion of their shipments. They experience a heavy imbalance of freight southbound and need all of the northbound freight they can get. For example, in the first six months of 1966, Mercury Freight dispatched 86 empty vehicles from Pensacola for lack of freight. Diversion of the available freight from the existing carrier services will have a serious adverse effect upon a number of them.

We must conclude that in the circumstances applicant Roadway has failed to show that the present or future public convenience and necessity requires the services it proposes to and from North Florida points.

Through the control of West, Roadway has gained entrance to the Mobile and New Orleans areas serving intermediate points, and as previously noted to Baton Rouge through the Memphis, Jackson and Hattiesburg gateways, but not through New Orleans. The testimony of witnesses supporting service to

or from Baton Rouge relates to freight which would or could be moved through these West gateway points. The freight moving between the Baton Rouge area on the one hand, and, on the other, points in the midwestern, eastern and New England areas to a considerable degree is routed through the Memphis gateway. This also is true with respect to freight from the Middle Atlantic area and the Carolinas although it may also move over the Atlanta or Birmingham gateways and thence through Mississippi and to some extent through New Orleans. In any event operation through New Orleans is not necessary. In fact, some of the witnesses specifically want to avoid having their freight move through the New Orleans gateway which they consider to be too congested.

Although there may be a convenience and flexibility of operations which Roadway would gain in having available a route from New Orleans to Baton Rouge, this record does not support a finding that such a service is required by the present or future public convenience and necessity. Neither has the proposed service at intermediate points on such a route been shown to be required by the present or future public convenience and necessity. The primary witness in this respect is a large shipper at Plaquemine who supported the Roadway application. The shipper is presently served by Gordons, Herrin, Red Ball, Ryder, Saia, Missouri Pacific Truck Lines and Consolidated Copperstate. Poplarville Trucking also serves the community and more recently Mercury Freight has received authority to serve Plaquemine. This witness proposes to continue to use the joint-line services which these carriers offer in conjunction with their respective connecting lines. His support of the Roadway application is for the purpose of obtaining additional single-line service as a means of securing faster transportation, reducing damage and contamination, and speeding tracing service.

The quality of the service which this witness has been receiving especially with respect to transit time is included and con-

sidered in the general discussion under that topic heading. The evidence discloses some very good service on inbound shipments as well as much that appears to fall below the standards which the carriers have prescribed for themselves. This situation prevails as to both the various applicants and the protestants who are involved in serving this witness. Gordons is one of the primary delivering carriers for this witness. A large portion of the shipments handled are received from other carriers. An analysis of the exhibits depicting Gordons' inbound services indicates a 71.7 percent on-time performance from Chicago to Plaquemine, with an additional 20.7 percent of the shipments being only one day late under Gordons' standard. Its service from Memphis to Plaquemine however, indicates only a 47.5 percent on-time delivery, an additional 29.5 percent one day late, and 23 percent over one day late. Although the witness is a major shipper of products outbound from the area, data with respect to its outbound service is not of record.

Again there is a heavy imbalance of traffic southbound and any dilution of the available northbound traffic may impair the services of existing carriers. Considering the amount of motor common carriers service available, its quality, and the adverse effect upon these services that may result from a grant of the Roadway application for service at intermediate points between New Orleans and Baton Rouge it is necessarily concluded that there also is no showing that the present or future public convenience and necessity requires this proposed service.

Petitions—Motions

Following the closing of the hearing a number of parties filed petitions and motions seeking some specific relief or further action. The motion of Georgia-Florida-Alabama Transportation Co. (GFA) dated September 30, 1968, to withdraw its protest to the Bowman application is granted. GFA remains a

protestant to the applications of Herrin, Roadway, Red Ball, Floyd & Beasley, Strickland and Baggett.

Protestants Campbell Sixty-Six and Gordons filed a petition dated April 17, 1968, urging that the Commission reopen the Strickland application (MC-59680 (Sub-No. 147)) for the limited purpose of receiving additional evidence pertaining to the proposed schedules of Strickland. Specifically petitioners ask to have received in this record testimony of a representative of Strickland given April 1, 1968, in another proceeding before a joint board with respect to service between Houston and New Orleans (applications Nos. MC-2229 (Sub-No. 131), Red Ball Motor Freight, Inc.; MC-87511 (Sub-No. 11), Saia Motor Freight Line, Inc.; and MC-111383 (Sub-No. 17), Braswell Motor Freight Lines, Inc.). This testimony notes that it takes from 4 to 6 hours to strip a trailer of less-than-truckload freight and that trailers of such freight must arrive at either New Orleans or Houston not later than 5:30 a.m. for less-than-truckload freight to be stripped, sorted, segregated, routed and loaded in city units so that any substantial amounts may be delivered the day of arrival. It is alleged that this is incompatible with the proposals submitted by Strickland as an applicant in this proceeding as set forth in Appendix D to its Exhibit No. 38 listing proposed regular schedules to and from major points in its application No. MC-59680 (Sub-No. 147), in that in some instances those schedules propose same day deliveries of freight arriving at the terminal as late as 11:49 a.m., 12:15 p.m. and 12:50 p.m.

These arrival times do not relate to deliveries at either Houston or New Orleans. Specifically, they relate to deliveries at Texarkana, Ark. (arrival time 12:50 p.m.), Atlanta, Ga. (arrival time 11:49 a.m.), and Birmingham, Ala. and Dallas, Tex (arrival time 12:15 p.m.). The testimony therefore in the Houston to New Orleans proceeding is not in itself contradictory of the schedules proposed herein. Furthermore the Strick-

land witness in this proceeding is not the same person as the Strickland witness in the Houston to New Orleans proceeding. In addition the Strickland witness in this proceeding was cross-examined upon these particular schedules. As to the compatibility of the testimony in the Houston to New Orleans proceeding with the proposed schedules herein, the present record contains sufficient data with respect to carrier practices in the terminal handling of freight, and the pickup and delivery services and practices of the applicants to reach appropriate conclusions without the need of any further data. In these circumstances the receipt of additional evidence is not warranted and the plea of protestants will be denied.

A number of parties to these proceedings filed pleadings seeking leave to file supplementary briefs for the purpose of having the examiners take notice of the Commission's actions subsequent to the close of this record in several proceedings involving some of the applicants and protestants in which the issues therein have some bearing upon the issues in this consolidated proceeding. Johnson Motor Lines replied to these pleadings. The Commission properly may take notice of its actions and findings in other proceedings (although not of the evidence contained in those records)[18] and of the outstanding certificates it has issued.[19] The examiners accordingly have taken notice of the Commission action and of certificates issued in certain proceedings as reflected in this report. No useful purpose therefore will be served by adding these pleadings in this already voluminous record. Accordingly, except for the foregoing discussion, no further consideration will be given to those pleadings.

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[18] *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965); *Consolidated Freightways, Inc.—Purchase—Revmers*, 36 M.C.C. 623, 625 (1941).

[19] *Liquid Carriers, Inc. Extension—Liquid Alum*, 72 M.C.C. 285, 287 (1957); *West Brothers, Inc. Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969).

Braswell Motor Freight Lines, Inc., and Campbell Sixty-Six Express, Inc., filed a joint petition to reopen the proceedings for further hearing to present evidence of certain facts occurring since the close of the hearing. Specifically Braswell wants to present evidence that the validity of its certificate No. MC-111383 (Sub-No. 16) which is noted in Appendix 1 to its Exhibit No. 1977 authorizing extension of its operations between Jackson, Miss., and Atlanta, between Birmingham and Atlanta, between Tuskegee, Ala. and Atlanta, and between Opelika, Ala. and Columbus, Ga., has been upheld by the courts, and that it instituted operation thereunder September 3, 1968. It further is desirous of introducing evidence of such operation, its increased facilities, solicitation program, and its need for additional traffic in connection with those new operations.

Campbell Sixty-Six proposes to introduce evidence of its certificate No. MC-75320 (Sub-No. 106) issued February 26, 1969, authorizing extension of its operations between Birmingham and Atlanta in connection with traffic originating at, destined to or interlined with other carriers at authorized service points on its regular routes in Mississippi and Missouri except Gulfport, Miss., Kansas City and St. Louis, Mo., and points within the commercial zones of each. It also wants to introduce evidence of operations being conducted under that certificate, the new single-line services it is now performing, its additional facilities and equipment, its solicitation program, and its need for additional traffic. Applicants Johnson, Bowman, Red Ball and Herrin replied to the petition.

It is not unusual that in a lengthy proceeding such as this considerable time passes before a final order is reached during which circumstances and conditions may change. It is therefore necessary that the Commission exercise its discretionary power to reopen such lengthy proceedings to receive evidence of changes with extreme care, otherwise the administrative

process may never achieve a just and effective conclusion.[20] Notice of the status of the two certificates has been taken by the examiners, and a further hearing for the purposes proposed is neither necessary or desirable. Findings can be made properly upon the original record and they will not be altered by the receipt of the proposed additional evidence.[21] In these circumstances the joint petition of Braswell and Campbell Sixty-Six to reopen these proceedings for further hearing is denied.

On brief certain of the protestants renewed their objections to certain rulings of the examiners. It is contended that Appendices A and B to Exhibit No. 1985 constituting a supplemental time-in-transit study of Bowman should be rejected as not properly constituting rebuttal evidence. It is urged that if the supplemental study is intended to corroborate Bowman's transit study in its case in chief (Exhibit 47) it is merely cumulative. If intended to modify the exhibit it is not proper rebuttal evidence and should have been presented only after a reopening of the case in chief for that purpose; and if only a transit study, it does not constitute a proper rebuttal of any evidence presented by protestants. In any event it is argued that preparation of the data contained in the exhibit is sufficiently defective to render it of little value and reliability. The examiners reaffirm their ruling receiving Appendices A and B to Exhibit 1985 in evidence. It constitutes rebuttal data relating to information and transit-time studies presented by protestants pertaining to Bowman's service in connection with certain interlining carriers particularly in respect of freight moving to or from Bowman's present territory and points in Texas, Louisiana, Arkansas, Kansas, Missouri and points west thereof. The objection as to

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[20] *New Orleans Shippers Assn., Inc., Investigation*, 323 I.C.C. 619, 639-640 (1964).

[21] *Pere Marquette Ry. Co. Merger*, 271 I.C.C. 667, 670; *Marion Trucking Co. Inc.—Purchase—Harwood Trucking*, 45 M.C.C. 377, 386 (1947).

the method of preparation of the appendices relates only to the weight to be accorded the exhibit.

Objections were renewed to the receipt in evidence of Exhibits 343, 347 and 349 sponsored by certain witnesses on behalf of applicant Red Ball. These exhibits reflect service by Red Ball for these particular witnesses where Red Ball is the delivering or intermediate carrier. They were prepared by Red Ball for the witnesses from its own delivery receipts and the witnesses then checked the exhibits from their respective records. The Red Ball bills underlying the exhibits were available for inspection and were used in cross-examination. Aside from testifying that the exhibits reflected shipments made by them the respective witnesses were unable to testify further concerning the data shown on the exhibits or the manner in which the underlying documents were prepared. From time to time these witnesses have requested copies of the delivery receipts from carriers and rely upon such documents, but for these particular exhibits prepared specifically for use in testifying in these proceedings at the request of Red Ball, the witnesses merely requested Red Ball to furnish copies of delivery receipts covering shipments they had made to a specified area in a given period. While the witnesses were unable to testify as to the practices of Red Ball in preparing its bills underlying these exhibits, the bills are documents which carriers are required to prepare when transporting property in interstate commerce, and no one questioned the authenticity of the documents underlying the exhibits. In these circumstances the examiners reaffirm their ruling receiving the exhibits in evidence to be given such appropriate consideration as the circumstances warrant.

Renewal also is made for the receipt in evidence of an offer of proof on behalf of witness Goodwin for protestant Gordons. Mr. Goodwin, a man of long and respected experience in the field of motor carrier operations, testified concerning various

factors to be considered in establishing a cutoff time for the receipt of line-haul less-than-truckload freight at a particular terminal after which delivery normally would not be made until the following day. When asked whether in his opinion an arrival time at either Dallas or Atlanta around noon normally would permit delivery of less-than-truckload freight on the day of arrival an objection to the question was sustained unless the response was confined to Gordons. An offer of proof was then made to the effect that in the opinion of the witness based upon his experience, such arrival time (as contained in certain of the applicants' proposed schedules) would not normally or reasonably be expected to afford delivery of miscellaneous less-than-truckload freight on the day of arrival. That general conclusion is not material unless related specifically to the factors and conditions under which the applicants propose such schedules. Accordingly, the examiners reaffirm their ruling.

Several protestants moved for dismissal of the Bowman application on the ground that it proposed to connect regular route operations in the East with the proposed regular route operations in the Southwest by use of its irregular route authority in the middle contrary to past Commission cases and procedures. The issuance to Bowman of a certificate extending its regular route operations over various routes between Greensboro, N. C. and Gadsden, Ala. has rendered that issue moot and requires no further discussion. (Certificate No. MC-94201 (Sub-No. 35) issued June 12, 1969 embracing among others No. MC-94201 (Sub-No. 61)). Renewal of a motion to strike Exhibit No. 62 in its entirety also is denied. Portions of the exhibit were stricken during the course of the hearing by the examiners and no basis has been shown for modification of that ruling.

Summary and Conclusions

We have heretofore discussed at some length the principal issues involved herein. All matters raised on brief, including requested findings, have been considered. Those which have not been specifically discussed in our report are deemed not of controlling significance or necessary to the proper disposition of the issues, or are not warranted by the record.

A substantial volume of traffic moves between the areas and points involved in these applications. The areas have grown in population and have experienced industrial and economic expansion as well. Many of the witnesses anticipate a continuing increase in the amount of freight they ship or receive. Almost all of the testimony of the public witnesses relates to such freight moving in less-than-truckload quantities, which generally requires a considerable amount of handling in its movement from point of origin to destination.

There are numerous motor carriers operating and providing service, both single-line and joint-line, between the major cities and points in the area, and they have expanded their service and facilities to meet the growing need. These applications propose the addition of single-line service between points and areas where single-line services are now available, and also they seek to provide single-line service between other points and areas in lieu of the existing joint-line services, or to add new joint-line services and new gateways. The evidence discloses numerous existing motor carrier services available to the public in the areas involved.

The primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public. A large percentage of the public witnesses expressed some dissatisfaction with the service they have been receiving, especially

with respect to the length of time it takes for the transportation of their freight, inconsistency of the transportation services used, poor tracing, poor pickup and delivery service, interline difficulties, and refusal of carriers to handle their freight. Yet many so complaining had made no investigation of the availability of other services, nor tried them in an effort to find a more satisfactory transportation service.

Applicant and protestant carriers normally make regular daily pickups where there is sufficient traffic to warrant such service. When carriers are called for specific pickups, the pickup service is adequate and responsive to the needs of the shippers.

There are instances in which both applicants and protestants, although holding authority to perform a single-line service between certain points, for various reasons actually interline the traffic with other carriers. There also is evidence of some carriers (including some of the applicants and protestants) having failed at one time or another in other ways to provide service as authorized under their certificates. To the extent such actions are violative of the terms of their certificates and the provisions of section 216(b) of the Interstate Commerce Act, remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers.

Some witnesses criticized the existing single-line services, but for the most part their criticism was minimal. Many of them had not tried all of the available single-line services, nor the joint-line services, in an effort to remedy their complaint.

Applicants propose certain service standards or schedules for the operations they intend to offer the public as improvements over the existing services. The record, however, fails to show that applicants will be able to provide a general transportation service which is so superior to that of the existing

carriers as to warrant a finding that public convenience and necessity require the proposed new services.

Much of the evidence deals with alleged deficiencies of the existing interline services. We recognize that normally single-line service is more satisfactory than joint-line service, and that many of the lesser problems and irritants mentioned by the witnesses would be eliminated or minimized by single-line service. However, the national transportation policy does not tolerate the conclusion that all shippers and all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest.

Based upon the evidence as herein discussed and as noted in the appendicies which are a part of this report we conclude that the applicants have failed to establish that the present or future public convenience and necessity require the operations proposed in their respective applications and that each of the applications should be denied.

Findings

In all proceedings, upon consideration of all evidence of record, the examiners find that public convenience and necessity do not require the operations for which certificates are sought.

In view of the findings, the examiners recommend that the appended order be entered.

By Gerald E. Jessup and Edward E. Kobernusz, Hearing Examiners.

(Signature) GERALD E. JESSUP
(Signature) EDWARD E. KOBERNUSZ

Recommended by Gerald E. Jessup and Edward E. Kobernusz, Hearing Examiners.

(Signature) GERALD E. JESSUP
(Signature) EDWARD E. KOBERNESZ

Order

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the ..... day of ....., 1969.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA

No. MC-2202 (Sub-No. 273)

ROADWAY EXPRESS, INC., EXTENSION—NEW ORLEANS, LA.

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION—ATLANTA, GA.

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., RE-ENTITLED DEATON, INC., EXTENSION—DALLAS, TEX.

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION—DALLAS, TEX.

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION—ATLANTA, GA.

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION—DALLAS, TEX.

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION—DALLAS, TEX.

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION—DALLAS, TEX.

No. MC-111231 (Sub-No. 67)

JONES TRUCK, LINES, INC., EXTENSION—ATLANTA, GA.

Investigation of the matters and things involved in these proceedings having been made, said applications upon due no-

tice having been heard by the examiners who have made and filed a report herein containing their findings of fact and conclusions thereon; which report is hereby made a part hereof, and said proceedings having been duly submitted:

It is ordered, That said applications be, and they are hereby, denied.

It is further ordered, That to the extent not granted in the report, the pleas of certain of the parties to introduce additional evidence and requesting that notice be taken of certain matters occurring since the closing of this record be, and they are hereby, denied.

And it is further ordered, That these orders shall be effective on .....

By the Commission, division 1.

H. NEIL GARSON,
(Seal) Secretary.

APPENDIX A

Applicant information, including the name, headquarters, docket number, application filing date, authority sought, present authority, motor vehicle equipment, terminal facilities, financial data.

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Appendix A-1

HERRIN TRANSPORTATION COMPANY*
HOUSTON, TEX.

No. MC-1124 (Sub-No. 206)

a. Application Filed: June 18, 1965

b. Authority Sought:

General commodities including classes A and B explosives (but excepting commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Serving the points of Birmingham, Mobile, Montgomery, Ala.; Columbus, Ga.; Jackson, Miss., and Pensacola, Fla., as intermediate points on applicant's presently authorized regular routes:

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* Herrin Transportation Company was merged into McLean Trucking Company, effective October 1, 1969, as authorized in No. MC-F-10121, *McLean Trucking Company—Control and Merger—Herrin Transportation Company* (not printed), decided August 5, 1969.

(2) Serving as points of joinder only, the points of Atmore, intersection of U. S. Highways 29 and 80 near Tuskegee, Flomaton, Woodstock and Selma, Ala., and Poplarville, Miss.

(3) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson, Miss., over U. S. Highway 80 to Macon, Ga., thence over Georgia Highway 87 to Jackson, Ga., thence over U. S. Highway 23 to Atlanta, and return over the same route, serving the intermediate points of Montgomery, Ala., and Columbus, Ga.; and serving Selma and the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as points of joinder only.

(4) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, and return over the same route, serving the intermediate point of Birmingham, Ala.

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(5) Between New Orleans, La., and Birmingham, Ala.:

From New Orleans over U. S. Highway 11 to Birmingham, and return over the same route, serving no intermediate points; and serving Woodstock, Ala., and Poplarville, Miss., as points of joinder.

(6) Between Pensacola, Fla., and Flomaton, Ala.:

From Pensacola over U. S. Highway 29 to Flomaton, and return over the same route, serving no intermediate points; and serving Flomaton, Ala., as a point of joinder only.

(7) Between Woodstock, Ala., and Mobile, Ala.:

From Woodstock over Alabama Highway 5 to junction U. S. Highway 43 near Thomasville, Ala., thence over U. S. Highway 43 to Mobile, and return over the same route, serving no intermediate points; and serving Woodstock, Ala., as a point of joinder.

(8) Between Montgomery, Ala., and Atlanta, Ga.:

From Montgomery over U. S. Highway 80 to Tuskegee, Ala., thence over U. S. Highway 29 to Atlanta (also from Montgomery over Interstate Highway 85 to Atlanta) and return over the same route, serving no intermediate points; and serving the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as a point of joinder only.

(9) Between Atlanta, Ga., and Columbus, Ga.:

From Atlanta, Ga., over Georgia Highway 85 to Woodbury, Ga., thence over Georgia Highway 85E to Manchester, Ga., thence over Georgia Highway 85 and alternate U. S. Highway 27 to Columbus and return over the same route, serving no intermediate points.

(10) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U. S. Highway 31 (also over Interstate Highway 65) to Mobile and return over the same route, serving the intermediate point of Montgomery, Ala.; and serving the point of Flomaton, Ala., as a point of joinder only.

(11) Between Selma, Ala., and Montgomery, Ala.:

From Selma over Alabama Highway 14 to Prattville, Ala., thence over U. S. Highway 82 to Mont-

gomery and return over the same route, serving no intermediate points; and serving Selma as a point of joinder only.

(12) Between Mobile, Ala., and Baton Rouge, La.:

From Mobile over U. S. Highway 98 to Lucedale, Miss., thence over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 21 to Covington, La., thence over U. S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points; and serving Poplarville, Miss., as a point of joinder only.

(13) Between Birmingham, Ala., and Columbus, Ga.:

From Birmingham, Ala., over U. S. Highway 280 to Columbus and return over the same route, serving no intermediate points.

Restriction: Service proposed at the points and over the routes specified in paragraphs 1 through 13 above is restricted to traffic moving to, from or through Memphis, Tenn., or Monroe, New Orleans or Baton Rouge, La.

c. Present Authority:

Herrin holds authority to operate as a common carrier of general commodities including explosives over regular and irregular routes within an area bounded generally on the west by Houston, Waco, and Fort Worth, Tex., on the north by Little Rock, Ark., and Memphis, Tenn., on the south by New Orleans, La., and on the east by Jacksonville, Fla., and Savannah, Ga. Within this area Herrin serves over 1,000 points.

More specifically, these routes which include service to numerous intermediate points extend between (1) Houston and New Orleans through Orange, Tex., (2) Houston and Dallas-

Fort Worth, Tex., (3) Houston and Waco, Tex., (4) Dallas and New Orleans through Lufkin, Tex., and De Ridder, La., (5) Dallas and Monroe, La., through Shreveport, La., (6) Shreveport and New Orleans through Alexandria, La., (7) New Orleans and Baton Rouge, La., (8) Shreveport and Memphis through El Dorado, Ark., (9) El Dorado and Little Rock, Ark., (10) New Orleans and

Jacksonville, Fla., through Crestview, Marianna, Tallahassee, Pensacola, and Lake City, Fla., and numerous points in south Georgia, including Macon, Savannah, Valdosta, Thomasville, and Waycross. Its routes into Macon and Savannah extend along U. S. Highway 80 through Jackson, Miss., Montgomery, Ala., Columbus, Ga., which points are traversed for operating convenience only. It operates from Memphis to Jacksonville, Fla., via Tupelo, Miss., Birmingham, Ala., and Columbus, Ga., the latter three points being traversed for operating convenience only.*

Herrin's proposal basically is to obtain authority to serve the points of Birmingham, Mobile, and Montgomery, Ala., Columbus, Ga., Jackson, Miss., and Pensacola, Fla., as intermediate points on its presently authorized regular routes, extend its operations to Atlanta (now accomplished), and have connecting routes between its primary routes to facilitate operations.

d. Motor Vehicle Equipment:

(1) Present

Tractors—252
Trailers—441 (including 5 refrigerated vans)
Trucks—225 (pickup and delivery)

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* In January 1968, Herrin acquired authority to operate between Macon and Atlanta, Ga., restricted against service between Memphis or Little Rock and Atlanta, and also containing the restriction as herein proposed. No. MC-F-9730, *Herrin Transportation Co.—Purchase (Portion)—Tamiami Freightways, Inc.* (not printed), decided December 22, 1967.

(2) Contemplated additions to operate proposed authority

Tractors—41

Trailers—80

Trucks—67

e. Terminal Facilities:

Present—13 terminals and 7 agency stations located at various points in Texas, Louisiana, Arkansas, Tennessee, Georgia and Florida.

Proposed—6 additional terminals located at Atlanta and Columbus, Ga., Birmingham, Mobile and Montgomery, Ala., and Jackson, Miss.

f. Financial Data:

Herrin's balance sheet as of December 31, 1965, shows assets aggregating $2.28 million including current assets of $2.16 million. Its current liabilities are $907,272. Its capital account shows $700,00 capital stock and $228,967 as net income for 1964-1965. In 1965, Herrin's operating revenues were $12.9 million with a net income of $334,024 before provision for taxes, and $162,802 after such provision.

Its 1967 and 1968 annual reports of revenues and statistics to the Commission reflect operating revenues of $14,565.386 and $16,993,965, respectively.

Appendix A-2

ROADWAY EXPRESS, INC.
AKRON, OHIO

No. MC-2202 (Sub-No. 273)

a. Application Filed: December 7, 1964

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

Between Montgomery, Ala., and Baton Rouge, La.: From Montgomery over U. S. Highway 31 to junction U. S. Highway 29, thence over U. S. Highway 29 to Pensacola, Fla., thence over U. S. Highway 90 to New Orleans, La., thence over U. S. Highway 61 to Baton Rouge, and return over the same route, serving all intermediate points and the off-route points of Plaquemine, La., and those in Louisiana within 10 miles of U. S. Highway 61 between New Orleans and Baton Rouge.

Restriction: Restricted against traffic originating at, destined to, or interchanged at Birmingham or Montgomery, Ala., or their respective commercial zones, and further restricted to traffic moving through Montgomery, Ala.

c. Present Authority:

Roadway holds authority to operate as a motor common carrier of general commodities with the usual exceptions over an extensive network of routes in States generally east of and

including Amarillo, Tex., Kansas City, Kans., and Milwaukee, Wis., except Florida, Maine, New Hampshire, and Vermont. It also is authorized to transport both general commodities and specified commodities over irregular routes.

Note: In No. MC-F-10178, *Roadway—Control—West Brothers* (not printed), decided June 26, 1969, the Commission approved Roadway's application to control West Brothers, Inc., a protestant in this proceeding. West's operations extend over routes between Birmingham, Montgomery and Mobile on the east, New Orleans on the south, Baton Rouge, Natchez

and Jackson on the west, and Memphis on the north, subject to certain restrictions. See Appendix D.

d. Motor Vehicle Equipment:

(1) Present

Tractors—2,196

Trucks—273

Trailers—3,712 (including 8 refrigerated, 25 insulated, 379 open tops, and 19 converta vans)

e. Terminal Facilities:

Present—119 located at various points throughout system.

Proposed—8 additional terminals, with major terminals at Pensacola, Mobile, New Orleans, and Baton Rouge, and smaller terminals at Gulfport and Pascagoula, Miss., and Greenville and Brewton, Ala.

f. Financial Data:

Roadway's balance sheet as of December 31, 1965, shows assets aggregating $50 million. Its current assets of $20.9 mil-

lion includes $14.8 million in cash and marketable securities. Current liabilities are $14.1 million. The capital account shows capital stock $9 million and retained earnings of $19.9 million. For the year 1965 its operating revenue was about $120 million and its net income before provision for federal income tax $10.9, and after, $5.9 million.

Its 1967 and 1968 annual reports of revenues and statistics filed with the Commission reflect operating revenues of $150,750,934 and $184,120,328, respectively.

Appendix A-3

RED BALL MOTOR FREIGHT, INC.
DALLAS, TEX.

No. MC-2229 (Sub-No. 132)

a. Application Filed: May 17, 1965

b. Authority Sought:

General commodities including classes A and B explosives (but excepting household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 29, thence over U. S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala., for purposes of joinder only:

From Meridian over U. S. Highway 11 to Tuscaloosa, and return over the same route, serving no intermediate points.

Restriction: Restricted against the transportation of property moving between Memphis, Tenn., and its commercial zone, on the one hand, and, on the other, Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and their respective commercial zones.

c. Present Authority:

Red Ball is authorized to operate as a common carrier of general commodities (with exceptions) over extensive routes within a territory generally bounded by Denver, Colo., and Santa Fe, N. Mex., on the west, Houston, Tex.,

and New Orleans, La., on the south, Mobile, Ala., Jackson, Miss., and Memphis, Tenn., on the east, and Kansas City, Mo.-Kans., and Denver, Colo., on the north. Within this area Red Ball serves over 1,450 points, including 544 in Texas, 478 in Louisiana, and 135 in Arkansas.

More specifically, these routes which include service at many intermediate and off-route points, extend (1) between Denver, Colo., and Dallas, Tex., via Pueblo, Colo.; Clayton, N. Mex.; Amarillo and Wichita Falls, Tex.; and also via Lamar, Colo.,

and Boise City, Okla., (2) between Denver, Colo., and Memphis, Tenn., via Oklahoma City, Okla., and Little Rock, Ark., (3) between Dallas and Forth Worth, Tex., and Houston, Tex., (4) between Houston, Dallas and Forth Worth, Tex., and Jackson, Miss., via Shreveport and Monroe, La.; (5) between Dallas and Forth Worth, Tex., and Memphis, Tenn., via Shreveport, La., and Little Rock, Ark.; (6) between Dallas and Fort Worth, Tex., and Baton Rouge and New Orleans, La., via Shreveport, La.; (7) between New Orleans and Baton Rouge, La., and Jackson, Miss., and Memphis, Tenn.; (8) between Memphis, Tenn., and Kansas City, Mo., and Kansas City, Kans., via Little Rock and Fort Smith, Ark.; (9) between New Orleans and Baton Rouge, La., and Natchez, Vicksburg and Jackson, Miss.; (10) between Memphis, Tenn., and Jackson, Vicksburg, Natchez and Gulfport, Miss.; (11) between Dallas, Houston, and Fort Worth, Tex., and Mobile, Ala., via Shreveport and Monroe, La., and Jackson, Miss., and also via Baton Rouge and New Orleans, La.; (12) between New Orleans and Baton Rouge, La., and Kansas City, Mo., and Kansas City, Kans.

d Motor Vehicle Equipment:

(1) Present

Tractors (Road)—654 (includes over 100 sleeper cabs)

Trailers (Road)—1,520 (includes 47 refrigerated, 20 insulated, 40 open top, and 25 converta vans)

Pickup and delivery trucks—712

Pickup and delivery trailers—71

(2) Proposed

To add equipment as it becomes needed to serve the routes

e. Terminal Facilities:

Present—92 terminals (includes 44 in Texas, 17 in Louisiana, 8 in Arkansas, 4 in Mississippi, 1 in Missouri, 1 in Alabama, 1 in Tennessee, 6 in New Mexico, 2 in Oklahoma, 8 in Colorado)

Proposed—3 additional terminals located at Atlanta, Ga., Birmingham, Ala., and Greenville, Miss.

f. Financial Data:

Red Ball's balance sheet as of February 28, 1966, shows assets aggregating over $12. million. Its current assets of $9.3 million includes approximately $1.48 million cash. Its current liabilities are about $4.8 million, and its capital account reflects $1.9 million in capital stock and $4.6 million earned surplus. Its operating revenues for 1965 were $36. million with a net income before provision for income tax of $2.67 million.

Its annual reports of revenues and statistics for 1967 and 1968, filed with the Commission, show operating revenues of $42,372,324 and $45,384,538, respectively.

Appendix A-4

DEATON, INC.
BIRMINGHAM, ALA.

No. MC-11207 (Sub-No. 233)

a. Application Filed: May 28, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as

defined by the Commission, commodities in bulk, and those requiring special equipment), over irregular routes:

(1) Between Atlanta, Ga., on the one hand, and, on the other, Monroe and Shreveport, La., Dallas and Fort Worth, Tex., and points within 10 miles of Dallas and Fort Worth.

(2) Between New Orleans, La., on the one hand, and, on the other, Baton Rouge, La., Orange, Beaumont, Texas City, and Houston, Tex., and points within 10 miles of Houston.

Restriction: Restricted against local service between New Orleans and the points specified.

Applicant proposes to tack the above authority with its present authority in the States of Alabama, Louisiana, Mississippi, Georgia and Florida.

c. Present Authority:

Deaton is an irregular route common carrier of general and specific commodities between certain points and territories located in the States of Florida, Georgia., South Carolina, North Carolina, Virginia, Kentucky, Ohio, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Texas, Oklahoma, Kansas, Missouri, Colorado, and New Mexico. Its general commodity authority involves primarily transportation between Atlanta, Ga., and Birmingham, Ala. (including points within 65 miles of Birmingham), on the one hand, and, on the other, New Orleans, La., and points in Mississippi.

d. Motor Vehicle Equipment:

(1) Present

Tractors — 310 (30 on order for which there are to be 15 trade-ins)

Trailers — 553 (20 additional on order. These include 253 vans, 278 flat beds, and 22 specialized units)

Pickup and delivery units — 100

(2) Proposed

Addition of 20 tractors and 40 trailers.

e. Terminal Facilities:

Present — 12 terminals located at Atlanta, Ga., Birmingham, Mobile and Anniston, Ala., Columbus, Greenville, Tupelo, Jackson, and Natchez, Miss., New Orleans, La., Memphis, Tenn., and Tampa, Fla.

Proposed— Proposes to establish terminals at Dallas, Houston, and Beaumont, Tex., Monroe, Baton Rouge, and Shreveport, La.

f. Financial Data:

Deaton's balance sheet as of November 30, 1965, shows assets aggregating $3.8 million, including current assets of $1.9 million. Current liabilities were $838,254. Its capital account of $1.69 million consists of $141,600 in capital stock and $1.55 million retained earnings. For the eleven month period ending November 30, 1965, Deaton's operating revenues were $8.8 million. Its net income before provision for income tax was $934,147, and after, $546,946.

Deaton's annual reports of revenues and statistics for 1967 and 1968 filed with the Commission reflect operating revenues of $10,758,227 and $11,584,817, respectively.

Appendix A-5

FLOYD & BEASLEY TRANSFER COMPANY, INC.
SYCAMORE, ALA.

No. MC-18088 (Sub-No. 36)

a. Application Filed: May 18, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U. S. Highway 80 to Fort Worth, and return over the same route. Intermediate and off-route points: Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

(2) Between Atlanta, Ga., and Houston, Tex.:

From Atlanta over U. S. Highway 29 to Opelika, Ala., thence over Interstate Highway 85 to Montgomery, Ala. (also from Opelika over U. S. Highway 29 to junction U. S. Highway 80, thence over U. S. Highway 80 to Montgomery), thence over U. S. Highway 31 to Mobile, Ala., thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S.

Highway 190 to junction U. S. Highway 165 at Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge and Lake Charles, La., Orange, Beaumont and Texas City, Tex., and those within 10 miles of Houston.

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(3) Between Montgomery, Ala., and junction U. S. Highways 11 and 80 near Cuba, Ala., over U. S. Highway 80, **for purpose of joinder only,** serving no intermediate points.

(4) Between junction of U. S. Highways 71 and 190 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, **for purpose of joinder only,** serving no intermediate points.

(5) Between junction U. S. Highway 78 and Alabama Highway 21 near Anniston, Ala., and the junction of U. S. Highways 231 and 80 near Montgomery, Ala., for purpose of joinder with applicant's irregular-route operations:

From junction U. S. Highway 78 and Alabama Highway 21 over Alabama Highway 21 to junction U. S. Highway 231, thence over U. S. Highway 231 to junction U. S. Highway 80, and return over the same route, serving the intermediate point of Sycamore.

Restriction: Restricted to traffic moving between points east of the Mississippi River except Baton Rouge, La., on the one hand, and, on the other, points west of the Mississippi River and Baton Rouge.

c. Present Authority:

Floyd & Beasley is a regular and irregular route common carrier of general and specific commodities—the latter being predominantly textile machinery and textile products—in the States of Alabama, Georgia, South Carolina, and Tennessee. Its authority to transport general commodities includes transportation from Atlanta, Ga., Chattanooga, Tenn., and all points in South Carolina to Birmingham, Ala. The authority to transport textile products includes service from 54 Alabama points to points in Alabama, Tennessee, Georgia and South Carolina.

Seventy-five percent of Floyd & Beasley's traffic consists of textile products and the remainder is of general commodities. Approximately 50 percent of its traffic is connecting line freight.

d. Motor Vehicle Equipment:

(1) Present

Tractors—101

Trailers—208

Pickup and delivery—25

e. Terminal Facilities:

Present —Six terminals located at Atlanta, Ga., Greenville, S. C., Chattanooga, Tenn., Birmingham, Sycamore and Lanett, Ala.

Proposed—Proposes to establish terminals at Baton Rouge, Lake Charles, Monroe, and Shreveport, La., Beaumont, Dallas, Fort Worth, Houston, Orange, and Texas City, Tex.

f. Financial Data:

Floyd & Beasley's balance sheet as of December 31, 1965, shows assets aggregating $2.64 million, including current assets of $1. million. Current liabilities were $278,246. Its capital account shows a net worth of $920,018 consisting of capital stock $80,000, and earned surplus $840,018. For the year 1967 its operating revenues totaled $3.7 million. Net income before provisions for income taxes was $181,309, and after $150,672. For the year 1968 its operating revenues totaled $4.3 million.

Appendix A-6

STRICKLAND TRANSPORTATION CO., INC.
DALLAS, TEX.

No. MC-59680 (Sub-No. 147)

a. Application Filed: June 16, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Atlanta, Ga., and Shreveport, La.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Shreveport, and return over the same route.
Intermediate point: Jackson, Miss.
Joinder point: Monroe, La.

c. Present Authority:

Strickland is a regular route common carrier of general commodities operating over a network of routes extending from the Southwest to the midwest and northeast portions of the United States. More particularly, the routes in the Southwest embrace portions of Texas, Louisiana, and Arkansas and extend to such major cities as Memphis, St. Louis, Milwaukee, Racine, Kenosha, Aurora, Joliet, Chicago, South Bend, Detroit, Cleveland, Philadelphia, Camden, Atlantic City, South Kearny, New York, Bridgeport, Orange, New Haven, Hartford, Springfield and Boston.

By the proposed additional routes Strickland would add service between Atlanta, Birmingham, and Jackson, on the one hand, and, on the other, presently authorized service points in Arkansas, Mississippi, Louisiana, and Texas, via Monroe and Shreveport, La., and Texarkana, Tex. Strickland is of the opinion that route circuity would make impractical the use of the additional routes in connection with Strickland's service to or from Memphis and its points north and east thereof.

d. Motor Vehicle Equipment:

(1) Present

Tractors (Road)—207
Trailers (Road)—787

City pickup trucks—190

City pickup tractors—251

City pickup trailers—261

e. Terminal Facilities:

Present—36 located throughout system including terminals at Dallas, Houston, Memphis, Shreveport, New Orleans, Monroe, San Antonio and Texarkana.

Proposed—4 additional terminals at Atlanta, Birmingham, Jackson, and Greenville.

f. Financial Data:

Strickland's balance sheet as of December 31, 1965, shows assets aggregating $11.3 million, including current assets of $2.7 million. Current liabilities also were $2.7 million. Its capital stock and surplus totaled $4.35 million. In 1965 Strickland's operating revenues were $30.3 million with a net income, before provision for income taxes, of $550,632, and after, $320,428.

Strickland's 1967 and 1968 annual reports of revenues and statistics filed with the Commission reflect operating revenues of $28,065,709 and $33,880,723, respectively.

Appendix A-7

BAGGETT TRANSPORTATION COMPANY
BIRMINGHAM, ALA.

No. MC-76177 (Sub-No. 304)

a. Application Filed: July 30, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, blasting supplies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Forth Worth, Tex.:

From Atlanta over U. S. Highway 29 to junction U. S. Highway 80 (near Tuskegee, Ala.), thence over U. S. Highway 80 to Montgomery, Ala. (also from Atlanta over Interstate Highway 85 to Montgomery), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Montgomery and Selma, Ala., Dallas, Tex., those within 15 miles of Dallas, and those within 15 miles of Fort Worth.

(2) Between Birmingham, Ala., and Fort Worth, Tex.:

From Birmingham over U. S. Highway 11 to junction U. S. Highway 80 (near Cuba, Ala.), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate point: Tuscaloosa, Ala.

(3) Between Montgomery, Ala., and Houston, Tex.:

From Montgomery over U. S. Highway 31 to Mobile, Ala. (also from Montgomery over Interstate Highway 65 to Mobile), thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 via Baton Rouge to Kinder, La., thence over U. S. Highway 165 to the junction of U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Mobile, Ala., Beaumont, Port Arthur, Smith's Bluff, Texas City, and those within 15 miles of Houston.

(4) Between the junction of U. S. Highways 190 and 71 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, serving no intermediate points, for purpose of joinder only.

(5) Between Meridian, Miss., and the junction of U. S. Highways 11 and 190 near Slidell, La., over U. S. Highway 11, serving no intermediate points, for purpose of joinder only.

c. Present Authority:

Baggett holds authority as a common carrier of general commodities (with exceptions) over regular and irregular routes. The regular routes extend generally between the terminal points of Chattanooga, Tenn., Rome, Atlanta, and Columbus, Ga., Florence, Decatur, Birmingham, Montgomery and Mobile, Ala., and New Orleans, La. Over irregular routes its authority embraces the transportation of general commodities from Montgomery to points in Alabama within 125 miles of Montgomery and of specified commodities in a rather extensive area. In

addition Baggett is engaged in the transportation of explosives from and to points and areas in 44 States including Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Texas. Baggett Bulk Transport, Inc., a wholly owned subsidiary, and Alabama Highway Express, Inc., a carrier controlled by Baggett, also are engaged in the transportation of property in interstate commerce.

d. Motor Vehicle Equipment:

(1) Present

City trucks and tractors—272

Road tractors—334

Trailers—750 (including open tops, beam racks, side doors, atomic energy, temperature control, and dry freight vans)

(2) Proposed

Equipment adequate for present.

e. Terminal Facilities:

Present—20, located in Georgia (3), Tennessee (1), Mississippi (1), Louisiana (1), Alabama (14).

Proposed—3 additional terminals at Dallas-Fort Worth, Houston, and Beaumont.

f. Financial Data:

Baggett's balance sheet as of December 31, 1965, shows assets aggregating $7.5 million, including current assets of $2.5 million. Current liabilities were $1.3 million. Its capital stock ($144,000) and earned surplus reflect a net worth of $2.6 million. In 1965 Baggett's operating revenues were about $11 mil-

lion with a net before provision for income taxes of $134,841, and after such provision of $129,469.

Baggett's 1967 and 1968 annual reports of revenues and statistics filed with the Commission reflect operating revenues of $14,056,881 and $14,113,906, respectively.

Appendix A-8

BOWMAN TRANSPORTATION, INC.

General Office: EAST GADSDEN, ALA.

Principal Terminal: ATLANTA, GA.

No. MC-94201 (Sub-No. 56)

a. Application Filed: July 12, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading):

(1) Between Birmingham, Ala., and Houston, Tex.:

(a) From Birmingham over U. S. Highway 31 (also over Interstate Highway 65) to Atmore, Ala., thence over Alabama Highway 21 to the Alabama-Florida State line, thence over Florida Highway 97 to junction U. S. Highway 29, thence over U. S. Highway 29 to Pensacola, Fla., thence over U. S. Highway

90 to New Orleans, La., thence over U. S. Highway 61 to Baton Rouge, La., thence over U. S. Highway 190 to Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 (also Interstate Highway 10), thence over U. S. Highway 90 (also over Interstate Highway 10) to Houston and return over the same route, serving the intermediate points of Pensacola, Fla., Mobile, Ala., Grand Isle, Lockport and Golden Meadow, La., Pascagoula and Moss Point, Miss., New Orleans, Baton Rouge and Lake Charles, La., and Orange and Beaumont, Tex., and the off-route points of Port Arthur, Baytown and Texas City, Tex., and those off-route points within a 15 mile radius of Birmingham and Mobile, Ala., Pensacola, Fla., New Orleans, Baton Rouge and Lake Charles, La., and Port Arthur, Beaumont and Houston, Tex.:

(b) From Birmingham over U. S. Highway 11 (also over Interstate Highway 59) to New Orleans, La., thence over U. S. Highway 61 to Baton Rouge, La., thence over U. S. Highway 190 to Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 (also Interstate Highway 10), thence over U. S. Highway 90 (also Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Meridian, Laurel and Hattiesburg, Miss., and those off-route points within a 15 mile radius of Birmingham, Ala., New Orleans, Baton Rouge and Lake Charles, La., Port Arthur, Beaumont, and Houston, Tex., and Hattiesburg and Meridian, Miss.

(2) Between Brewton, Ala., and Pensacola, Fla.:

Over U. S. Highway 29, serving no intermediate points, as an alternate route for operating convenience only.

(3) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U. S. Highway 11 to Bucksville, Ala., thence over Alabama Highway 5 to Thomasville, Ala., thence over U. S. Highway 43 to Mobile and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(4) Between Poplarville, Miss., and Baton Rouge, La.:

From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La., thence over U. S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(5) Between Montgomery, Ala., and junction U. S. Highways 11, 80, and Interstate Highway 59:

Over U. S. Highway 80, serving all intermediate points.

(6) Between Birmingham, Ala., and Fort Worth, Tex.:

(a) From Birmingham over U. S. Highway 11 (also over Interstate Highway 20) to Meridian, Miss., thence over U. S. Highway 80 (also over Interstate Highway 20) to Fort Worth and return over the same route, serving the intermediate points of Meridian, Jackson, and Vicksburg, Miss., Monroe, Ruston and Shreveport, La., and Marshall, Gladewater, Long-

view and Dallas, Tex., and those off-route points within 15 mile radius of Birmingham, Ala., Fort Worth, Tex., and Meridian, Jackson and Vicksburg, Miss.;

(b) From Birmingham over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, Tex.-Ark., thence over U. S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U. S. Highway 80 to Fort Worth and return over the same route, serving the intermediate points of Columbus, Greenwood and Greenville, Miss., El Dorado and Crosset, Ark., Texarkana, Tex.-Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark., and those off-route points within a 15 mile radius of Birmingham, Ala., Dallas and Fort Worth, Tex., Texarkana, Tex.-Ark., Columbus, Greenwood and Greenville, Miss.

(7) Between Birmingham, Ala., and Topeka, Kans.:

From Birmingham over U. S. Highway 78 to Memphis, Tenn.; thence over U. S. Highway 70 to junction U. S. Highway 63 (also Interstate Highway 55), thence over U. S. Highway 63 to junction U. S. Highway 60 at Cabool, Mo., thence over U. S. Highway 60 to Springfield, Mo., thence over U. S. Highway 66 to Carthage, Mo.; thence over U. S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka and return over the same route, serving the intermediate points of Memphis, Tenn., Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo., and Kansas City, Mo.-Kans., and those off-route points within a 15 mile radius of Birmingham, Ala., and Kansas City, Mo.-Kans., and Springfield, Mo.

(8) Between Memphis, Tenn., and Little Rock, Ark.:

From Memphis over U. S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving off-route points within a 15 mile radius of Little Rock, Ark.

(9) Between West Memphis, Ark., and Little Rock, Ark.:

From West Memphis over U. S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., serving off-route points within a 15 mile radius of Little Rock, Ark.

(10) Between Little Rock, Ark., and Greenville, Miss.:

From Little Rock over U. S. Highway 65 to junction U. S. Highway 82 near Lake Village, Ark., thence over U. S. Highway 82 to Greenville and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.:

Over U. S. Highway 75 (also over Interstate Highway 45), serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.:

Over Interstate Highway 30 (also over U. S. Highway 67), serving no intermediate points, as an alternate route for operating convenience only.

Restrictions:

(a) Restricted to service on traffic moving from, to, or through Birmingham, Ala., Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.

(b) Service at New Orleans, La., restricted to traffic originating at or destined to points in Tennessee and points in Alabama on and north of U. S. Highway 78.

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(c) Restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not as to traffic moving through Memphis, Tenn., and its commercial zone) on the one hand, and points west of the Mississippi River, on the other hand.

c. Present Authority:

Bowman is a regular and irregular route carrier of general commodities (with exceptions) operating generally throughout the six southeastern States of Florida, Georgia, Alabama, Tennessee, South Carolina and North Carolina; and between those States and numerous points in Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York and Connecticut. As here pertinent, it is authorized to operate (A) over irregular routes (a) between points in Florida, Georgia, Alabama, North Carolina, South Carolina and Tennessee, on the one hand, and, on the other, 5 named points in northwest Georgia, namely Cedartown, Lindale, Mount Berry, Rome, and Summerville (known as Bowman's "five-point authority"); (b) between points in South Carolina and Georgia; (c) between points in South Carolina, on the one hand, and, on the other, points in North Carolina, and Richmond, Va., and Baltimore, Md.; (d) between points in Connecticut, New York, and New Jersey within 35 miles of Columbus Circle, New York, N. Y.; and (B) over regular routes (a) between Birmingham, Ala., and Chattanooga, Tenn.; (b) between Gadsden and Anniston, Ala.; (c) between Charlottesville, Va., and New York, N. Y.; (d) between Winston-Salem, N. C., and Baltimore, Md. Bowman also holds extensive operating authority for the transportation of various specific commodities.

By combining with its present authority over regular and irregular routes Bowman seeks to extend its operations beyond its present terminal points at Atlanta, Birmingham, Pensacola, Mobile, and Memphis to serve 8 new points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas.

Note: In August 1968 Bowman acquired a portion of the operating rights of Alabama Highway Express which included among other authority the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, *Bowman Transportation, Inc.—Purchase (Portion)—Alabama Highway Express, Inc.* (not printed), decided July 8, 1968.

d. Motor Vehicle Equipment:

(1) Present

Tractors—478 (includes 14 straight and 359 sleeper-cab; 105 pickup and delivery)

Trucks—120

Trailers—940 (van trailers-over-the-road)
38 (pickup and delivery)

(2) Contemplated additions to serve proposed new territory

Tractors—100

Trucks—100 (pickup and delivery)

Trailers—200

e. Terminal Facilities:

Present—25 terminals located throughout its system, but primarily in the 6 southeastern States.

Proposed—20 additional terminals and 3 agency stations located in the States of Arkansas, Louisiana, Mississippi, Texas, Missouri and Kansas.

f. Financial Data:

Bowman's balance sheet as of December 31, 1965, shows assets aggregating $11.4 million. Its current assets of almost $4. million includes $2. million cash. Current liabilities are approximately $2.4 million, and the capital account of about $4.3 million consists of $50,000 in capital stock and the remainder in retained earnings. Operating revenues for 1965 were $18.3 million and net income before provision for taxes was $2. million, and after provision for taxes (including application of investment credit in the amount of $101,500) $1.3 million. Its investments in real property, leasehold improvements, and operating equipment total about $6.6 million.

Bowman's 1967 and 1968 annual reports of revenues and statistics to the Commission reflect operating revenues of $28,785,137 and $35,356,298, respectively.

Appendix A-9

JOHNSON MOTOR LINES, INC.
CHARLOTTE, N. C.

No. MC-106401 (Sub-No. 18)

a. Application Filed: March 23, 1965

b. Authority Sought:

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U. S. Highway 80 to Fort Worth, and return over the same route. Intermediate and off-route points: Jackson, Miss., Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

Restriction: Restricted to traffic moving from, to, or through Atlanta, Ga.

(2) Between New Orleans, La., and Houston, Tex.:

From New Orleans over U. S. Highway 61 to Baton Rouge, La., thence over U. S. Highway 190 to junction U. S. Highway 165 at Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge, La., Orange, Beaumont, and Texas City, Tex., and those within 10 miles of Houston.

Restriction: Restricted to traffic moving from, to, or through Gulfport, Miss. (no local service between New Orleans and points on the above route).

(3) Between Montgomery, Ala., and the junction of U. S. Highways 11 and 80 near Cuba, Ala., over U. S. Highway 80 for operating convenience only.

(4) Between Shreveport, La., and the junction of U. S. Highways 71 and 190 near Baton Rouge, La., over U. S. Highway 71 for operating convenience only.

c. Present Authority:

Johnson is a motor common carrier of general commodities, with exceptions operating over regular and irregular routes. Its regular routes extend between Boston and Worcester, Mass., on the north and Pensacola, Fla., Mobile, Ala., and New Orleans, La., on the south. The network of regular routes also spreads through the eastern half of Pennsylvania and throughout North and South Carolina to Atlanta, Ga. The irregular route authority extends generally to areas in Massachusetts, New Jersey, Pennsylvania, North Carolina, and South Carolina.

d. Motor Vehicle Equipment:

(1) Present

Trucks—221

Tractors—475 (including 335 road tractors)

Trailers—929 (including beam racks, open tops, converta vans, insulated, and temperature controlled)

(2) Proposed

Tractors—50 additional

Trailers—100 additional

e. Terminal Facilities:

Present—35 located throughout system (with 2 more under construction in Rhode Island and Massachusetts)

Proposed—7 additional terminals. Major terminals at Dallas, Houston, Baton Rouge, and Jackson; agency stations at Shreveport, Monroe, and Beaumont.

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f. Financial Data:

Johnson's balance sheet as of December 31, 1965, show assets aggregating $16 million. Current assets of almost $5 million includes over $2 million cash. Current liabilities are $3.4 million. Its capital account shows $65,481 common stock, and surplus of over $5 million. Johnson's operating revenue for 1965 was $28 million with a net income before provision for income taxes of $1.6 million, and after, $1 million.

Johnson's annual reports of revenues and statistics for 1967 and 1968 filed with the Commission reveal operating revenues of $31,431,165 and $36,064,832, respectively.

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Appendix A-10

JONES TRUCK LINES, INC.
SPRINGDALE, ARK.

No. MC-111231 (Sub-No. 67)

a. Application Filed: June 14, 1965

b. Authority Sought:

General commodities including classes A and B explosives (but excepting commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Texarkana, Ark., and Sherman, Tex.:
From Texarkana over U. S. Highway 82 to Sherman, and return over the same route.

All intermediate points.

(3) Between Birmingham, Ala., and Memphis, Tenn.:

From Birmingham over U. S. Highway 78 to Memphis, and return over the same route.

No intermediate points.

(4) Between Texarkana, Ark., and Dallas, Tex.:

From Texarkana over U. S. Highway 67 to Dallas, and return over the same route.

All intermediate points.

Restriction: Service is restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not on traffic moving through Memphis and its commercial zone), on the one hand, and, on the other, points east of the Mississippi River.

c. Present Authority:

Jones is a common carrier of general commodities (with exceptions) over regular and irregular routes. Its regular routes

extend generally between its concentrated network of routes located in eastern Oklahoma, southwestern Missouri, and northwestern Arkansas, and the major Jones terminal points of Chicago, Ill., St. Louis, Kansas City, and Springfield, Mo., Wichita, Kans., Tulsa, Muskogee and Oklahoma City, Okla., Dallas, Tex., Memphis, Tenn., and Little Rock and Fort Smith, Ark. Within portions of this area Jones also is authorized to transport general commodities over irregular routes. It is authorized also to transport a number of specific commodities including frozen foods, prepared foodstuffs, canned goods, and steel and steel products.

d. Motor Vehicle Equipment:

(1) Present

Tractors—310 (180 road and 130 pickup)

Trucks—120

Trailers—636 (400 vans, 111 refrigerated, 125 pickup)

(2) Proposed

Tractors—10 additional

Trucks (pickup)—20 additional

e. Terminal Facilities:

Present—24 located throughout system in Arkansas (6), Oklahoma (6), Missouri (3), Mississippi (3), Kansas (2), Texas (2), Illinois (1), and Tennessee (1).

Proposed—4 additional terminals to be located at Atlanta, Ga., Birmingham, Ala., El Dorado, Ark., and Texarkana, Ark.-Tex.

f. Financial Data:

The Jones balance sheet as of December 31, 1965, shows assets aggregating $6 million. Current assets of $2.7 million includes $1.5 million cash. Current liabilities were $1.3 million. Its capital account totals $4.7 million including $964,800 capital stock and $3.7 million surplus. Operating revenues for 1965 were $13.7 million with a net income before provision for income tax of $1.1 million, and after $633,486.

Jones' 1967 and 1968 annual reports of revenues and statistics filed with the Commission reflect operating revenues of $16,117,746 and $18,687,408, respectively.

APPENDIX B

Index of Witnesses

Abbreviations

Baggett Transportation Company ..... BA
Bowman Transportation, Inc. ..... BO
Deaton, Inc. ..... D
Floyd & Beasley Transfer Company, Inc. ..... F
Herrin Transportation Company ..... H
Johnson Motor Lines, Inc. ..... JM
Jones Truck Lines, Inc. ..... JT
Red Ball Motor Freight, Inc. ..... RB
Roadway Express, Inc. ..... RE
Strickland Transportation Co., Inc. ..... S

Witness No.	Witness Name	Company Name	Application Supported
1	Phillips, H S	Mead Packaging Co.	H, D, RB, S, JT, BO
2	Langdon, C W	Tom Huston Peanut Co.	H
3	Solberger, S	Thompson Hayward Chem.	H
4	Bertolotti, J	Gamlen Chemical Co.	H, BO, JM
5	Burge, L	Colonial Shoe Co.	H
6	Govus, R	Shirley of Atlanta	RB, H, JM
7	Heflin, K	Visador Co.	RB
8	Alley, A K	Schering Corp.	RB
9	Ceder, R E	Eastman Kodak Co.	RB
10	Skelton, R G	Atkins Saw Div.	RB, S, JT
11	Myers, Duane I	Knox Glass, Inc.	D
12	Keeton, J	Thomas Foundries	D, S, BO
13	Bland, B R	Deering Milliken, Inc.	F, JM, BO, JT
14	McCarley, L J	Oconee Mills Div.	BO, JM, F
15	Baker, W S	Poly Products	F
16	Cheshire, T L	Justrite Envelopes Mfg.	S
17	Steely, D R	Carpenter Steel Co.	S
18	King, J M	Munford Co.	S
19	Weaver, O H	Pomona Products Co. Southern States United Cotton Goods Southeastern Textile Sparta Mfg. Co., Inc.	S
20	Culpepper, C	Atlanta Freight Bureau	S
21	Bailey, R E	Fox Mfg. Co.	BA
22	Duke, E	General Electric Co.	BA
23	Pollard, W S	Canebrake Shoes, Inc.	BA
24	Howard, W F	Eureka Foundry	BA
25	Hohman, W P	Goodrich, B. F., Co.	BA

Witness No.	Witness Name	Company Name	Application Supported
26	Schoening, R L	Union Camp Corp.	BO, JM, JT
27	Langston, J C	Duncan Motor Lines	BO, JM, JT
28	Harkins, J C	Chemstrand-Monsanto	BO, JM, JT
29	Brown, H D	Russell Stover Candies	BO, JT
30	Blackwelder, R A	Thonet Industries	BO, JM, JT
31	Bradford, G	Gilliam Furniture Co.	BO, JM, JT
32	Berry, C	Wilson-Jones Co.	BO, JM
33	Kleeman, C F	General Aniline & Film	BO, JM
34	Lundy, L	Momar, Inc.	BO, JM, JT
35	Finch, L D	Shaw Mfg. Co.	BO, JM, JT
36	Blumberg, M W	Briarcliff Mills	BO, JM, JT
37	Raynal, J S	Statesville Chair Co.	BO, JM
38	Cloer, A W	Reeves Bros Inc.	BO, JM, JT
39	Query, E N	Ross, F H & Co.	BO, JM
40	Knobel, E R	Dayco Corp.	BO, JM, JT
41	Chaplick, J P	Johns Manville Prods	RE
42	Leach, W R	Grace, W R & Co.	RE
43	Bourgeois, N	Louisiana Glass Co.	RE
44	Miller, C B	Kawneer Co.	RE
45	Schoelkopf, A	Black & Decker Co.	H
46	Turner, J D	Roybar of Georgia	H, RB
47	Eison, Al	Marsh Wall Products	H, JM
48	Haskell, M	Life Time Foam	S
49	Nance, D F	Warner-Slimwear Ling.	H, RB
50	Schaeffer, A	Armstrong Cork Co.	RE
51	Nuss, M E	Cochran & Co.	H, BO, JM, S
52	Deaver, F E	Moore Handley, Inc.	D, RB
53	Sheffield, J C	Lamson & Sessions Co.	RB
54	McGinty, R D	Avon Products	RB
55	Chapman, F G	Latham Time Recorder	RB

Witness No.	Witness Name	Company Name	Application Supported
56	Joyce, James J	Squibb, E R & Sons	RB
57	Barry, Jack	Barry Pattern & Fdry	RB, D
58	Thomas, J O	Read Steel Prods, Inc.	D
59	Cochran, M	Josam Mfg. Co.	D
60	Wahlman, J E	Republic Steel Corp.	D, BO, BA
61	Steffen, H R	Coats & Clark Sales	D
62	Fortenberry, G G	USCO Equipment Corp.	D
63	Richey, S F	Sonoco Products Co.	F
64	Prince, J A	Jantzen Southern Co.	F, BO, JM
65	Yarborough, D	Watkins Carolina Exp	F
66	Sedgwick, W J	Charles Bruning Co.	S
67	Lister, J P	Charles Pfizer & Co.	JM, RB, S
68	Nelson, C C	Nelson Paint Co.	BA
69	Meyer, N J	Wolverine Tube	BA
70	Hudson, H P	Price, L B Mercantile	S
71	Terrell, D C	Johnson Fluker Co.	BA
72	Murphy, N B	Murphy Ford Co.	S
73	Barschdorf, M P	Greenville Port Comm.	S
74	Carter, C W	Hewitt-Robins	BA
75	Grainger, O S	Gulf Oil Corp.	BA

76	Alpers, G D	United Merch & Mfgrs	JM
77	George, H P	Deran Confectionery	S, JM, JT
78	Raffaelle, R C	Jeffrey Mfg. Co.	BO, JM
79	Verrill, L	Saco-Lowell Shops	BO, JM
80	Arnold, J L	Reid Provident Labs	BO, JM
81	Hendricks, M	Vulcan Metal Prods	BA, JT, BO
82	Jones, F	Jones Mfg. Co.	BO, JT
83	Allen, E	Southeastern Tool-Die	BO, JT

Witness No.	Witness Name	Company Name	Application Supported
84	Worrell, J	Quality Park Envelope	BO, JT
85	Chapman, J T	H C & D Lines, Inc.	BO, JM
86	Parker, J M	Union Envelope Co.	BO, JT
87	Reagan, R	Dwoskin, Inc.	JM, JT, BO
88	Tice, K N	Her Majesty Underwear	BO, JM
89	Crawford, Sue	Coronet Inds., Inc.	BO, JM, JT
90	Boyles, F A	Westrac Co.	BO, JM, JT, F
91	Kessler, F E	Standard Register Co.	RE
92	Lynch, C J	Shepard Decorating Co.	RE
93	Dye, R K	C & D Battery Co.	RE
94	Conway, J F	Dunham Bush, Inc.	RE
95	Frydell, G	Friden, Inc.	H
96	Cox, J	Chicago Pneum Tool Co.	H
97	Schwartz, John	Will Scientific, Inc.	H
98	Hodges, K	State Farm Ins. Co.	RB
99	Scott, J E	Williamson Southern	RB, JM
100	Bradley, B H	Yates Amer Machine Co.	RB, H
101	Smith, L J	Westinghouse Parts Center	RB, JM
102	English, L	Orkin Exterminating	RB, H
103	Pound, R	Printak, Inc.	H
104	Moyers, T J	Rubatex Corp.	H
105	Housel, W H	Greif Bros. Cooperage	D
106	Barnum, C	Planet Southern Corp.	D
107	Robbins, C R	Birmingham Spring Serv.	D
108	Glasgow, T	Hurricane Steels Inds.	D
109	Berry, D H	Ethyl Corp.	H, D
110	Hatcher, B M	Avondale Mills	F
111	Hall, C L	Bon Air Yarn Mills	F
112	Dunn, R T	Sherman & Reilly	F

Witness No.	Witness Name	Company Name	Application Supported
113	Cassell, L	Central Motor Lines	F
114	McElroy, W	Union Floor & Carpet	S
115	Burke, B J	Lion Oil Co.	S

116	Puckett, J E	Building Products Co.	S
117	Allen, E	Climate Engineers, Inc.	S
118	Vickers, J	National Industries	S
119	Graves, A C	National Cabinet Co.	BA
120	Taylor, B D	Worthington Air Cond.	BA
121	Bostic, W A	Adams-Mercury-Cushman	BA
122	McNulty, J T	Magna-Par Co.	BA
123	Brown, W C	Diamond B Western Shop	BA
124	Roberts, G	Norwich Pharmacal Co.	JM, BO, JT
125	Parker, C	Thayer Coggin, Inc.	JM, BO
126	Miller, H W	Bostitch Southern, Inc.	JM, JT, BO
127	Lynch, W R	Crown Candy Corp.	BO, H, JT, JM
128	Herndon, J V	Simmons Co.	JM, BO
129	Clark, A	Remington Office Mach.	BO, JT
130	Bachelder, R C	Heekin Can Co.	JT
131	Holliday, G	Callaway Mills Co.	JM, BO, JT
132	Wedler, H	Bear Brand Hosiery Co.	JT
133	Johnson, E	Shakespeare Co.	JT
134	Danforth, R H	Cole Steel Equipment	BO, JM, JT
135	LaHatte, M T	Crawford & Thompson	BO, JM, JT
136	Stevens, J D	Cumberland Case Co.	BO
137	Ogle, C	Cutler Hammer, Inc.	BO, JM, JT, S
138	Cantrell, R	Dixie Logging Tool Co.	BO
139	Harvey, G A	Beaunit Fibers	RE
140	Dunn, S W	Acme Industries, Inc.	RE

Witness No.	Witness Name	Company Name	Application Supported
141	Newton, W E	Pettibone Corp.	RE
142	Fricks, J F	Burlington Inds., Inc.	RE
143	Harris, W C	Columbus Mills, Inc.	H
144	Flynn, J M	American Metal, Inc.	H
145	Wheatley, T	National Aniline	H
146	Rauh, T	Monarch Co.	H, JM
147	Williams, J E	Miss. Wholesale Drug Co.	RB
148	Hawkins, B	Simon & Mogliner	RB, JT, BO
149	Eubanks, J R	Utility Supply Co.	RB
150	Malberry, R L	Plantation Patterns	RB, S, D, BO
151	Goff, K	Consolidated Merch. Corp.	RB, BO
152	Speegle, D	Bebco Distributors	D
153	Owen, E T	Plastic Clad Corp.	D
154	Ellis, Jack	Lovable Brassiere Co.	H, RE, JM
155	Elliott, O B	Elliott Associates	D

156	Curry, J	Schollee Corp.	D
157	Johnson, W	General Amer Trans Co.	S
158	Herron, A	James W Clary Co.	S
159	Groover, T G	Builders Mfg. Co.	BA
160	Logan, D C	Ace Neon Sign Co.	S
161	Wilch, W W	Devilbliss Co.	S
162	Green, A F	Cass, N.D., Co.	BA
163	Humber, G	Swift Mfg. Co.	BA
164	Garner, W H	Sou Multiple Forms	BA
165	Eisenberg, C	Best-Pak Co.	BA
166	Metivier, R	Kendall Co.	JM
167	Holden, T	George E. Failing Co.	S
168	George, J A	Itek Business Prods.	BO, JM, JT

Wit-ness No.	Witness Name	Company Name	Application Supported
169	Lewis, G	Central Aircraft Corp.	BO
170	McDonald, C	Fine Products, Inc.	BO, JM, JT
171	McWharter, J R	Gordon Foods	JT, JM, BO
172	Kruk, S W	Amer. Cyanamid Co.	BO, JM
173	Dove, E	AAA Motor Lines	JM
174	Wright, J M	Chattanooga Glass Co.	BO
175	Calhoun, D L	Tip Top Products Co.	BO, JT, JM
176	Estabrook, F	Mitchell Ind. Tire Co.	BO
177	Gale, E R	Gale House of Music	BO, JT
178	McKowan, H W	Startex Mills	BO, JM
179	Wooten, T	Trane Co.	RE
180	Haygood, L B	Planters Mercantile	RE
181	Piem, S	Maryland Baking Co.	JT, JM, BO
182	Beckham, C H	Pensacola Mill Supply	RE
183	Ward, L P	Bostitch Atlanta, Inc.	RB
184	Fulbright, A L	W R Bean & Sons	RE
185	Lowe, R G	Grinnell Corp.	RE
186	Couch, D L	Oxford Chemical Corp.	RB, BO
187	Beason, J F	Bham Stove & Range Co.	RB
188	Hedgepeth, G T	Mississippi Bearings	RB
189	Mize, J H	Davis Whlse Drug Co.	RB
190	Roberts, E P	Frigidaire Sales Corp.	H
191	Craft, M	David Rothchild Co.	H
192	Gautney, L E	Kent Corp.	D
193	Parker, D E	R Hoe & Co	D
194	Jewel, D A	Crystal Sprgs. Bleachy	BO
195	Hines, M M	Allied Fence Co.	D

Witness No.	Witness Name	Company Name	Application Supported
196	Chambers, J C	Monarch Citrus Prod.	D, RB, JT
197	Keenan, J D	Reliance Panelyte	D
198	Courtney, R S	Chattanooga Medicine	BO
199	Bohler, S L	Murray Co. of Texas	S
200	Mazurkiewicz, C	Bowman Prods. Div.	S
201	Smith, C W	Addressograph Multigraph	S
202	Dash, G	Newman Elec Mtrs Co.	BA
203	Hendrick, W W	Cabell Electric Co.	S
204	Richards, E E	Modern Line Prods.	JT
205	Ellington, W M	Ellington Electronics	BO, JM
206	Ezelle, F J	Mississippi Bedding	BO, JM
207	Harris, R T	International Paper	BO, JM
208	Hicks, R L	Stone Container Corp.	BO, JM
209	McDonald, G G	Brock Candy Co.	BO
210	Davis, W P	Texize Chemicals, Inc.	BO, JM
211	Faison, Cameron	Southern Dyestuff Co.	BO, JM
212	Thompson, Scott	Baldwin Piano Co.	BO, JT
213	Andress, D S	Kraft Foods	BO, H, JT
214	Yager, R J	Lily Tulip Cup Corp.	BO, JM, JT
215	Folz, A L	Lorch Westway Corp.	BO, JM
216	Shelton, C B	Fashions of Texas, Inc.	BO, JM
217	Barrow, G	Bell Textile Co.	BO, JM, JT
218	Woolley, D B	Prentice Hall, Inc.	RE
219	Wager, E E	Genesco, Inc.	RE
220	Beekley, G H	Stanley G Flagg & Co.	RE
221	Sasser, W O	Winzer Co., Inc.	BO, JT, JM
222	Ricker, C D	Stockton Mfg. Co.	H
223	Jones, J R	Denman Rubber Mfg. Co.	RE
224	Kryso, F J	Dow Chemical Co.	RE
225	Fitch, J O	Dayco Corp.	H

Witness No.	Witness Name	Company Name	Application Supported
226	House, L E	Candy House	RB
227	Gaulden, H	Warlick Press, Inc.	H
228	Botelho, P	Maxwell Paper Co.	RB, S, BO, J
229	Davis, F	U S Gypsum Co.	RB, S
230	Miller, J	Primrose Oil Co.	H
231	Osnik, N	Alexander Smith	RB
232	Maxwell, H C	Temple Industry	RB
233	Hampton, B	Capital Industries	F
234	McGiffert, T B	Ala Textile Prods Corp.	F
235	White, A	Boss Mfg. Co.	F
236	Howell, F W	Southwest Sprg Mfg. Co.	BA
237	Murphy, M H	Golding Bros. Co.	F
238	Hawley, L E	Frostemp Artic Air	BA
239	Utley, R G	Utley Carpets & Drap.	BA
240	Hamilton, S W	Gibson Products Co.	S, RB

241	Lavo, G	Solinger & Sons	F
242	Tubbs, K P	Dallas Chamb. of Com.	RB, S
243	Harris, J W	Julian Noa Co.	BO, JM, JT
244	Thomas, C	Quaker States Metal	S
245	Malson, R R	John Sexton & Co.	BO, JM, JT
246	Goodier, E	Goodier Co.	BO, JM, JT
247	Smith, R A	Western Textile Prods.	BO, JM
248	Chambers, D	Charles Bruning Co.	S
249	Goolsby, W R	Murray Co. of Texas	BO, JM, JT,
250	Wakser, E H	Brass Craft Western	BO, JM
251	Haney, E M	Top Value Enterprises	S
252	Akins, K L	King Candy Co.	BO, JT, JM
253	Wilkes, J H	International Warehousing	BO, JT, JM

Witness No.	Witness Name	Company Name	Application Supported
254	Holt, L	Consolidated Handbags	BO, JT, JM
255	Dessommes, L F	Coats & Clark Sales Corp.	JT, RB
256	Berry, R A	Morgan & Lindsey Co.	BO, JM
257	O'Leary, C	Proctor-Silex Corp.	RE
258	Mickey, M E	Dallas Bias Fabrics	BO, JM
259	Bugbee, C	Cutler Labs., Inc.	BO
260	Lisson, H C	Pass & Seymour, Inc.	RE
261	Stevens, M R	Textile, Inc.	BO, JM, JT, S
262	Anderson, C J	City Products Corp.	BO, RB
263	Beaver, H D	Revere Copper & Brass	RE
264	Black, J W	TVK Automotive Whse	RE
265	Evans, J	Duncan Foods Co.	H
266	Funderburk, E	Gordons Jewelry Corp.	H
267	Milazzo, S N	Activated Metals, Inc.	RE
268	Ford, D L	Henson Kickernick, Inc.	RB
269	Stewart, T	Thermo Plastics	H
270	Boyd, J K	Webb Filter Co., Inc.	RB
271	Brown, J P	I. D. Brown Paint Co.	H
272	Ragsdale, D M	Levines, Inc.	RB, S
273	Coleman, R W	National Cash Register	RB
274	Cooper, N W	Great Lakes Screw Corp.	H
275	Taylor, O L	Texas Express Co.	RB, S
276	Capehart, W D	A & B Bag Co.	S
277	Rainey, B	Henderson Mfg. Co.	RB
278	Humbert, Drew	Wolfe Textile Co.	S
279	Smith, H A	Friedrick Refrigerators	S
280	Elmore, D	Texoma Wholesale Jewelers	S
281	Whitworth, W W	Whitworth Carpets	BA
282	Newton, C W	Newton Bros. Lbr. Co.	BA
283	Scarborough, H P	Auto Air Accessories	BO, JM, JT

Witness No.	Witness Name	Company Name	Application Supported
284	Napier, Miles	Verson Mfg. Co.	S
285	Matuzzi, R E	Fabrics, Inc.	BA
286	Norton, F R	Larkotex Surgical Mfg.	JT, BO
287	Murphy, C	Lummus Cotton Gin Co.	BO
288	Montgomery, S S	Western Spec. Coatings	BO
289	Vatter, C	Lorna Fashions, Inc.	BO, JT, JM
290	Scarpinito, V J	M. Lowenstein & Sons	JM
291	Morris, R J	Windor Industries, Inc.	BO, JM, JT
292	Bruce, J T	Aloe Div Brunswick	BO
293	Fincher, J	Vanguard Products, Inc.	BO, JM, JT
294	Murphree, C P	Lone Star Ribbon Co.	BO, JM
295	Hendricks, J	Seneca Textiles Corp.	BO, JM
296	Cain, C E	Cain's Machine Shop	BO
297	Purse, J A	Purse & Co., Inc.	BO, JM, JT
298	Maynard, A	Harry Davis of Dallas	BO, JM, JT
299	Anderson, C H	Fasco Industries, Inc.	RE
300	Griffith, L G	Whitehall Labs, Inc.	BO, JM
301	Fair, S J	Allis Chalmers Mfg.	RE
302	Burden, R	Reliance Elec. & Engr.	RE
303	Colyer, C H	Oneida Limited	RE
304	King, E B	Morton's Shoe Stores	RE
305	Rose, J	Amer. Screen Mfg. Co.	H
306	Sullivan, D J	Columbia Records Co.	H
307	Wisley, C	Mathis Air Cond. Co.	H
308	Herod, R D	Continental Can Co.	H
309	McDowell, H	Red Rivers Textiles	RB
310	Stone, W H	Texas Tag & Specialty	RB
311	Sexton, B	Sexton Plant Farm	RB
312	Little, D	Amarlite Co.	RB
313	Brown, R	Perl Pillow Co.-Perl Pad Co.	H

Witness No.	Witness Name	Company Name	Application Supported
314	Newsom, R E	Texas Refinery Co.	S
315	Heard, R W	Frigiking-Cummins Eng.	S
316	Waller, W H	Selber Bros.	S
317	Ball, R H	A C Weber Co.	S
318	Klein, H	Pest Guard Prods.	BO
319	Faulkner, R E	Sam A. Wing Co., Inc.	JM, BO
320	Glater, I	Laura of Dallas, Inc.	BO, JM, JT
321	Trammel, F W	Bishop Autom. Trans. Pts.	BO
322	Einsle, R	Dresher Mfg., Inc.	BO, JM, JT
323	Dvorak, T J	Coopers, Inc.	BO, JM
324	White, D R	Western Auto Store	BO, JT
325	Kenney, A W	A. H. Robins Co.	BO, JM

326	Loving, J Y	Polk Miller Prod. Corp.	BO, JM
327	Koop, C	Titmus Optimus Co.	BO, JM
328	Lackie, R J	AMF Cycle Div Am Mach	BO, JT
329	Gilliland, L E	Texarkana Chamb Comm	JT, BO, S
330	Savary, T M	Savary Corp.	JT, BO, S
331	Walker, C C	Kendall Co.	BO, JM
332	Perreault, C	Canteen Corp.	BO, JM
333	O'Leary, C J	Lewis Shepherd Prods.	RE
334	Schneider, R J	Philip Carey Mfg. Co.	RE
335	Stanley, A A	Will & Baumer Candle	RE
336	Pitts, H	A R A Manufacturing, Inc.	H, RB
337	Mason, A	Poloron Products	H, S
338	Linnell, H	Mid Cont. Steel Casting	S
339	Ellis, B R	Reynolds Alum Supply Co.	S, H
340	Ranche, D R	Standard Brands, Inc.	RB

Witness No.	Witness Name	Company Name	Application Supported
341	Hood, L W	Airotex Co.	H
342	Vee, A J	Mercantile Stores Co., Inc.	RE
343	Baker, H J	S C M Corp.	RE
344	Eddy, D W	Cornelius Co.	S
345	Clem, L	Shaw Walker Co.	H
346	McCoy, R	Tempo Decorating Fabr.	H
347	Wiedeman, J M	Superior Switchboard	RB
348	Bridges, R L	Higginbotham Bailey	BO, JM, RB
349	Epps, G E	Nibco, Inc.	RB
350	Holland, W L	Boyle Midway	RB
351	Lee, H D	Delta Quality Prods.	S
352	Ufert, T R	Gym Dandy, Inc.	H, S, RB
353	Townsend, J E	Brewster Co.	S, RB
354	Atkins, D W	Rockwell Mfg. Co.	JT
355	Jones, D F	Carpets, Inc.	JT, BO
356	Killian, J C	John Killian Co.	BO, JM
357	Smith, H W	Hagerdorn's, Inc.	BO, JM, JT
358	Comroe, I H	Frozen Rite Products	BO, JM, JT
359	Brewer, L T	Monkeygrip Sales Co.	BO, JM, JT, S
360	Symank, M	Sherrod, Inc.	BO, JT
361	Ragsdale, D M	Levines, Inc.	BO, JM
362	Cheney, A L	Williamson Dickie Mfg.	BO, JM, JT
363	Tate, G L	Ft. Worth Carpet Co.	BO
364	Kale, R A	Crown Machine & Tool	BO, JM, JT
365	Locke, B D	Monnig's	BO, JM
366	Correro, J S	Burke Div Brunswick	BO, JM, JT
367	Harmes, D M	Guild Industries, Inc.	BO, JM
368	Smith, L L	Higgonbotham Pearlstone	BO, JM, JT

Witness No.	Witness Name	Company Name	Application Supported
369	Kavanaugh, J	Kavanaugh Ftr Frt.	S
370	Slotter, J L	LaFrance Industries, Inc.	BO, JM
371	LaRue, J	Bowles & Edens Supply Co.	S, BO, JM
372	Thompson, C	Tandy Leather Co.	S
373	Mandel, A	Marilyn Belts & Bags	S
374	Griffin, J	Daniel Radiator Corp.	S
375	Word, W	Connally Impl. Supply Co.	RB
376	Jaubert, M J	Mead Packaging Co.	RB
377	Patock, J	Hexcel Products, Inc.	RB
378	Gibson, B P	Taylor Foundry Co.	RB
379	Grade, D L	Geo E Anderson Co.	S
380	Carter, D J	Home Interiors & Gift	S
381	Briscoe, B	Xerox Corp.	RB
382	Schultz, A	Magnolia Brush Mfgrs	RB
383	Smith, M L	U S Brass Corp.	S
384	Kay, D R	Anchor Serum Co.	H
385	Chiricos, T	Dresser Ind. Valve	H
386	Boyd, J	C G Gribble Co.	H
387	Harris, D	Case Mfg Co. Casard Fur Mfg	RE
388	Harvey, P	Texas Wholesale Variety	H
389	Lady, K W	Datafold Forms, Inc.	RE
390	Ripperton, F	Samsonite Corp.	RB
391	Sinclair, R M	Lindsay Wire Weaving	BO, JM
392	Fournaris, J	Sweetheart Plastics	RE
393	Reid, S	Robinson & Heath Brokers	RE
394	Hanning, W M	Potts Longhorn Co., Inc.	BO
395	McNutt, W E	Cotter & Co.	RB
396	Pinelli, D E	Pinneli Welding Wire	BO, JM, JT
397	Bell, R	Bell Remnants, Inc.	BO, JM
398	Carson, H	J W Davis & Co.	BO, JM, JT

Witness No.	Witness Name	Company Name	Application Supported
399	McElhanon, H H	Frazier, Inc.	BO
400	Byrnes, H P	Byrnes Dist., Inc.	JM
401	Bell, M D	Jones of Dallas Mfg.	BO, JM, JT
402	Allen, J	Fortune Designers, Inc.	BO, JM
403	Treadway, B	Acme Linoleum & Tile	BO, JT
404	Leff, D	Leff Bros. Dry Goods	BO, JM
405	Kring, L D	Southwest Towel & Lin.	BO, JM
406	Shipman, R W	Torginol of Texas	BO, JM
407	Hurmis, D	Tempo Decorative Fabr.	BO, JM, JT
408	Woods, H L	Tri State Mill Supply	BO, JT, S
409	Willeford, W	Argus Camera Co.	H
410	Kincheloe, G W	Georgia-Pacific Corp.	S

411	Brewer, B L	Walker Hdwe & Lbr. Co.	S
412	Philips, L C	Riviana Foods, Inc.	H
413	Lemmons, H	Colony House, Inc. Saladmaster Corporation	BO, JM, JT
414	Blue, T R	W Shanhouse & Sons	S
415	Davis, D D	J A West Co.	S
416	Boozin, F	Fransil Hosiery Co.	H
417	Hawkins, A	Panhandle Assoc Grocr	RB
418	Roos, L	Amer Cyanamid Co.	RB
419	Weinberg, B J	Sheinberg Mfg. Co., Inc.	H
420	Stanton, H H	McKell's Sportswear	H
421	Thomas, C F	Overseas Motor Corp.	BO, JM, JT
422	Griffin, J P	Dan River Carpets, Inc.	BO, JM
423	Kellow, C C	Vera Lee Garment Co.	BO, JM
424	Allen, T H	Campus Sweater & Spts	BO, JM
425	Reeder, D	Dixon Jenkins Mfg.	BO, JM

Witness No.	Witness Name	Company Name	Application Supported
426	Guerin, E H	Amer Paper Tube Co.	BO, JM
427	Blick, V	Stephen Leedom Carpet	BO, JM
428	Humphries, J P	American Thread Co.	BO, JM, JT
429	Jolley, E	Modern Carpet Inds.	BO
430	Overholser, A W	Wexler McCoy Co.	BO, JT
431	Meadows, D	Humco Labs.	RB
432	Morriss, J C	Smith Blair, Inc.	RB
433	Wade, G C	Southwestern Drug	BO, JM, JT
434	Case, V B	Southwest Pump Co.	RB
435	Brown, M E	Dettelbach Pesticide	RB
436	Young, B	Coronet Carpets, Inc.	BO, JM, JT
437	Brown, J L	Marlite Div. Masonite	RB
438	Parisen, C	Gardner Denver Co.	RB
439	Shannon, V V	Jeffrey Mfg. Co.	RE
440	Mathews, C	Royal Crown Bottling	H
441	Erie, R R	Ero, Inc.	H, RE
442	Vaughn, H	Carpet Sales Co.	H
443	Conn, R C	Cook Chemical Co.	RE, H
444	Vandeventer, N S	Dallas Brush Mfg. Co.	JM, BO
445	James, S	Dallas Handbag Co.	H
446	Soforenko, I S	Carol Wire & Cable	RE
447	Kluttz, R L	Ken-Tool Mfg. Co.	RE
448	Patterson, W	Gidon Inds. Ltd.	RE
449	Oberling, R C	Fletcher Eqpt. Co.	H
450	McNelley, H W	Amer. Asso. Co., Inc.	S

451	Wheatley, J F	George E Anderson Co.	S
452	Standley, J R	Sears Roebuck & Co.	S, RB, H
453	Hampton, P R	Powers Wire & Staple	RE

Witness No.	Witness Name	Company Name	Application Supported
454	LaBarre, T R	Hampshire Chemical Div.	RE
455	Tredway, T A	Diaper Jeans, Inc.	S
456	Bragg, M W	Tecumseh Products	S
457	Leiter, B	Leiter of Dallas	S
458	Foster, J E	Foster Oar Co.	BO, JT
459	Edelman, B P	Alton Mfg. Co.	BO, JM, JT
460	Annese, F	Yorke Shirt Corp.	BO, JM
461	Randolph, R L	Amer. Permanent Ware	BO
462	Dodds, H	Texarkana Concr. Prds.	BO, JT
463	Ardinger, H T	H T Ardinger & Son Co.	BO, JM, JT
464	Krone, B	Sabin Robbins Paper	BO, JM, JT
465	Sale, C E	Nutt Sales, Inc.	BO, JM, JT
466	Nichols, H T	Olin Mathieson Chem.	BO, RB, JM
467	Jordan, D R	General Electric Co.	BO, JM
468	Barrack, D	Fawcett Haynes Prtg.	RE
469	Neill, A P	Magnolia Beauty Supply	RE
470	Collier, J A	Collier's Art & Craft	RE
471	Stewart, C E D	Plastinol Inds., Inc.	BO, JM, JT
472	Kennedy, W L	Curtiss Mathis Co.	BO, JM, JT
473	Berthelot, B J	Head & Engquist Eqpt.	RE
474	Lawson, M	Triangle Aluminum Co.	H
475	Thomasson, C	Texas Parts & Serv. Co.	H
476	Davidoff, H	Sweetwater Rug Corp.	RE
477	Davis, H C	Philadelphia Carpet	BO
478	Comeaux, B	Flag Textile Mills	H
479	Axton, J	Steelcase Co.	H
480	Rhodes, C R	H K Porter Co.	RB
481	Taylor, J	Brancrof Industries, Inc.	BO, JT
482	McClure, L P	Porter McClure Co.	JT, BO
483	Armstrong, F W	A M F Ben Hogan Co.	BO, JT, JM

Witness No.	Witness Name	Company Name	Application Supported
484	Calhoun, B R	Hardwick Etter Co.	RB
485	Hays, M	Old London Foods	RB
486	Doyle, N V	Heritage Soap & Candl.	RB
487	Browder, J	Harris Electric Co.	RB
488	Langston, W	Knox Glass, Inc.	RB
489	Bonesteel, J J	(Illegible)	RB
490	Cunningham, A B	(Illegible)	S

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491	Brizuela, L	Alloy Tube & Pipe Co.	S
492	Mackowiak, J	Aldens, Inc.	RE
493	McDermott, P J	Trice Floor Covering	BO, JM
494	Dittrich, M	W H Curtis & Co.	JM, RB, BO
495	Boyer, J L	General Electric Co.	S
496	Baker, L J	Permacel Div Johnson	RE
497	Kessler, C A	Mechanics Uniform Supl.	H
498	Anderson, W E	La France Industries	BO, JM
499	Hilger, B	Western Gear Corp.	H
500	Funderburk, E	Gordons Jewelry Corp.	BO, JM
501	Hightower, M	Keeton Industries, Inc.	BO, JM
502	Bell, B W	J. D. Martin Co.	BO, JM
503	Upson, G	Star Corp-Ohio Injector Co.	S
504	Garner, C N	Finger Furniture Co.	BO, JM
505	McHenry, J	George F. Failing Co.	H
506	Kiley, O A	Mechanics Unif. Sply	BO, JM
507	Weidekamp, A	Canteen Corp.	BO, JM
508	Wilson, R E	Daniel Radiator Corp.	BO, JM
509	Davis, D C	Lake Chas Harb & Term	H, RB, D, F, BA, S, BO, JM
510	Parker, R	General Electric Co.	S

Witness No.	Witness Name	Company Name	Application Supported
511	Aquillard, L F	Copolymer Rbr & Chem	RE
512	Kreinsieck, D M	Webster Industries	RE
513	Martin, F	Mira-Pak, Inc.	BO, JM
514	Butler, R W	Robert Butler Co.	RB
515	Lamy, J J	L B Evans Son Co.	RE
516	Coe, A D	A I M, Inc.	BO, JM
517	Milligan, M W	Wright Light, Inc.	H
518	Wright, S	Anchor Wire Rope Co.	H
519	Collins, B	Stephens Co.	BO, JM, H
520	Hermes, R	F & G Mdsg. Inc.	H
521	Pinkel, A	Phil Rich Fan Mfg. Co.	RB
522	Drucker, P	Michelin Tire Corp.	RB
523	Carmody, T	Curtis 1000, Inc.	RB
524	Welch, J	White Mfg. Co.	RB
525	Maness, C D	Anchor Fence Div.	RB
526	Hohle, M	Thermal Engr. Corp.	S
527	Naumann, R	United Cotton Goods	S
528	Robbinson, R W	Wix Corp.	BO, JM, RE
529	Dieterman, A E	McAx Corp.	S
530	Ritter, J	VUL CAP Eqpt. Co.	S

531	Glover, L	Lone Star Beer	S
532	Cook, C J	Amer Porcelain Enamel	BO, JM
533	Howard, L C	Liebermans	S
534	Barnette, W E	G A Stowers Furn Co.	BO, JM
535	Russell, D D	Walgreen's Drug Stores	BO, JM
536	Harper, M R	Hughes Tool Co.	BO, JM
537	Driscoll, L	Wilson Supply Co.	JM, BO
538	Dillashaw, H	Dilly Uniform Co.	BO, JM

Witness No.	Witness Name	Company Name	Application Supported
539	Spencer, W B	Three Weavers	BO, JM
540	Walsdorf, A W	Pellerin Milnor Corp.	H
541	Turnbow, W	Steele Canning Co.	JT
542	Bigge, J J	Hoyt Mfg. Corp.	RB
543	Stallings, J R	Overhead Door Co.	S
544	Robicheaux, M	Langenbeck, Inc.	D
545	Harrell, R W	West Point-Pepperell	F
546	Kees, W H	Pure Oil Co.	D, BA, BO, RB
547	Emerson, A P	American Metal, Inc.	BO
548	Hage, R H	Wysong & Miles Co.	BO, JM
549	Seiff, J L	Spotlight Co.	S
550	Shephard, D C	Capitol Bolt & Screw	BO, JM
551	Sullivan, R G	Dayton Sure Grip	BO, JT
552	Tarver, J A	Misceramic Tile Co.	JT
553	Miller, C E	Miller Wire Works, Inc.	BO, JM, JT, S
554	Reid, L G	Washington Mills Co.	RE
555	Cupit, C	Ero, Inc.	BO, JM, RE, H
556	Simpson, J A	Humble Oil & Refining	BO, JM, RE
557	Kincheloe, G W	Georgia Pacific Corp.	BO, JT
558	McCarty, D	Beco, Inc.	BO, JM
559	Curson, E H	Monroe Auto Eqpt. Co.	RE
560	Bowers, W F	Burton Rubber Proces	RE
561	Sheppard, G B	Rockwell Mfg. Co.	RE
562	Bordelon, H J	Lafayette Woodworks	H
563	Robert, S O	American Mfg. Corp.	RE
564	Castille, A P	Castille Whls Spec Co.	H
565	Robertson, J	Teena Originals, Inc.	BA
566	Buckner, J N	Continental Gin Co.	BA
567	Eyman, C E	Howard Stark Co., Inc.	H
568	Katz, W	Steiner-Lobman Co.	BA

Witness No.	Witness Name	Company Name	Application Supported
569	Burroughs, S R	Robinson Bros., Inc.	RB
570	Virgo, A	Princeville Canning	RB

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571	Bonin, J W	Dixie Office Supply Co.	RB
572	Ber, J M	Lighting, Inc.	H
573	Berry, R A	Morgan & Lindsey, Inc.	RB, H
574	Loeb, W K	D H Jay Industries, Inc.	F, BO, JM
575	Gargiulo, M	Richmond Screw Anchor	D
576	Utlay, W B	W B Utlay Paint Co.	BO
577	Stone, C R	Reichhold Chemicals	RE
578	Feinstein, J	Indus Mchy Supply Co.	F
579	James, T C	Progress Mfg. Co.	D
580	Beckman, H L	Henry L Beckman Flooring	D
581	Bobbit, F	Southern Alloy Corp.	F
582	Lawler, S	Lawler Machine & Fdry	D, BO
583	Kraft, M M	Mid-South Contract Sales	S
584	Sutherland, D	Miss. Stationery Co.	S
585	Langston, C L	Gilchrist Tractor Co.	S
586	Cahn, J	Sun Lighting Fixtures	BO, JM
587	Stone, R E	Pepsi Cola Bottling	S
588	Brent, C G	Brent Marine Supply	BO, JT
589	Smith, C L	Stag Shop, Inc.	BO, JM
590	Kremser, K E	Cooling-Heating Supply	BO, JT
591	Mitchell, G	Metal Trims, Inc.	BO, JM
592	Wright, R W	Automotive Warehouse	BO, JM
593	Babcock, A J	H-Brace Inc-Pagebar Inc	BO
594	Freundlich, M	Tandy Leather Co.	BO
595	Bean, O C	American Handicraft Hanna Barber & Beauty	BO, JM

Witness No.	Witness Name	Company Name	Application Supported
596	Gregory, O F	Gregory Mfg. Co.	BO, JM
597	Oubre, B A	Traction Tire Serv. Inc.	H
598	Winkelman, W	Johnnie & Mack, Inc.	BO
599	Berry, D H	Ethyl Corp.	BO, JM
600	Anderson, R J	Pelican Office Supply	BO, JM
601	Bergeron, G H	Copolymer Rbr & Chem	JM
602	Bridges, C W	Interstate Elec. Co.	BO, JM
603	Nichols, G	Gotham Educ Eqpt Co.	JT
604	Sturgeon, C H	Goodrich, B. F., Co.	RE
605	Murrey, A G	Standard Fittings Co.	H
606	Temple, M	General Electric Co.	H
607	Caillier, C J	Estorge Drug Co.	RB
608	Latour, C J	General Office Supply	RB
609	Chiricos, T	Dresser Indus. Valve	RB
610	York, C N	AFCO Corp.	RB

611	Gollay, J	Shanhouse Sons, Inc.	JT
612	Clark, E E	Stratton Baldwin Co.	RE
613	Rush, G L	Cosco Building Products	RE
614	Bostich, E W	Baton Rouge Supply Co. Baton Rouge Plg. Supply, and Baton Rouge Hdwe	RE
615	Breffeihl, L	Acme Warehouse, Inc.	H
616	Rellstab, W F	J Aron and Co., Inc.	H
617	Hand, A G	Builders Mfg. Co.	BO, JT
618	Fowler, W O	Southern Wipers, Inc.	BO, JM
619	Murphy, A R	Genl. Asbestos & Rbr.	RE
620	Balliew, S	Steveco	D

Witness No.	Witness Name	Company Name	Application Supported
521	Whited, R	Miller Falls Co.	D
622	Plunkett, C G	Guardian Chemical Co.	D
623	Yawn, J L	Godchaux, Inc.	RB
624	Howell, E	Wright Root Beer Co.	RB
625	Vaughan, W H	Paine Refrig. Supply Co.	S
626	Moore, T O	Southern Pipe & Supply	S
627	Carpenter, J	Home Supply Co.	S
628	Bennett, D D	Industrial Supply Co.	S
629	Hill, J E	Jantzen Southern, Inc.	BO, JM
630	Sugar, L G	Monroe Whls Drug Co.	BO, JM
631	Kaplan, C I	Standard Bag Co.	BO, JM, RB
632	Garner, J W	Stayon Products, Inc.	BO, JM
633	Johnson, J	Scovill Mfg. Co.	BO, JT
634	Ford, E G	Bechik Products, Inc.	BA
635	Heintz, C G	Elmer Candy Corp.	BO
636	Canedy, C T	Trend Mills, Inc.	BA
637	Kenerley, U S	Wolverine Tube	BO, JT
638	Watson, D	Selig Mfg. Co.	BO, JM
639	Hutcherson, J	Lewis Grocer Co.	JT
640	Hazlewood, D G	American Decorators	H
641	Waring, J D	Flint Ink Corp.	H
642	Klare, D	Klare Floor Covering	H
643	Graf, C J	Mon-Arc Welding Supply	H
644	Nizynski, W F	W. T. Grant Co.	BO, JM
645	Sparks, W W	Sparks Specialty Co.	BO, JM
646	Fertitta, F	Schlesengers Wholesalers	H
647	Dunigan, L E	Miss. Refri. Supply Co.	S
648	Gnocchi, J J	General Electric Co.	RE
649	Fish, H W	General Electric Co.	RE
650	Gibson, V W	Southeastern Products	D, BA

Witness No.	Witness Name	Company Name	Application Supported
651	Mize, H	McQueen Foundries, Inc.	D, S
652	Dabbs, E	American Fence Co.	D
653	Deaver, F E	Moore-Handley, Inc.	RE, S
654	Wallace, J K	Patterson Drug Stores	S
655	Creswell, H P	Baton Rouge Whls Drug	RB
656	Bogie, D T	Nelson & East Ford Co.	RB
657	Guillotte, C M	Superior Sewing Mach.	RB
658	Levin, S M	A.M.L. Corp.	BO, JM
659	Miller, J C	Natl. Advertising Co.	BO, JM
660	Avis, F H	Blumenthal Print Wks	RE
661	Dixon, H E	F Strauss & Sons Gibson Whlse Dist. Gulf Gibson Whls Dist. H. Michel Dry Goods Co.	JM, RB
662	Sides, E	James A Head & Co.	S
663	Burkey, N A	Chemical Solvent Co.	S
664	Maloney, G J	Gering Plastics Co.	RE
665	Haynes, C	Chris Haynes Elec Supply	S
666	Ufert, T R	Gym Dandy, Inc.	BO, JM
667	Blakeney, J C	Display Fixtures Newstand Fixtures Co.	BO, JM
668	Wiley, C	N. Carolina Display Fixt.	BO, JM
669	Rich, D F	Sinclair & Valentine	BO, JM
670	Cook, H	Hartwell Cook & Asso.	S
671	Langdon, C W	Tom Huston Peanut Co.	BA
672	Lummas, H	Lummus Cotton Gin Co.	BA
673	Badger, C L	Genesco, Inc.	BA
674	Canant, B R	Industrial Piping Supply	BO, JT
675	Worland, P W	Pillsbury Co.	BO
676	English, E	Phillips Van Heusen	BO, JM
677	Fagot, H	Flintkote Co.	BO

Witness No.	Witness Name	Company Name	Application Supported
678	Thornton, C	Solo Lighting, Inc.	JT, BO
679	Zachary, L	Greater El Dorado Com.	JT
680	Bohrer, S	Noah's Potato Chip Co.	RB
681	Sawyer, J E	Daisy Mfg. Co.	JT
682	Boyle, G T	Electron Corp.	RB
683	Gabe, V D	Gates Rubber Co.	RB
684	Aycock, L J	Aycock Dist. Co.	S
685	Albritton, A	Bruner Ivory Handle	S
686	Prince, S E	Prince Poultry, Inc. Prince Mfg. Co. Yost Hatch & Feed Lincoln Egg, Inc. S. E. Prince Co.	JT
687	Crawford, W	Butler Mfg. Co.	BO
688	Pryor, F	Hygeia Coca Cola Bottl.	BO
689	Osborn, P A	Memphis Furn. Mfg. Co.	H
690	Davis, E L	Merle Norman Cosmetics	H
691	Wilson, J K	Wil-Mar Supply Co., Inc.	S
692	Toner, J A	Chipman Chemical Co.	BO, JT
693	Tillery, L D	Tillery Container	RB
694	Hayden, D	Hallmark Cards, Inc.	BO
695	Robertson, M	Topeka Motor Freight	JT
696	Fisher, R W	L T York Co.	RB
697	Treptow, R F	H D Lee Co.	RB
698	Finken, E S	Vendo Co.	BO
699	Kinsinger, E R	Tubular Service Corp.	RB
700	Jacobson, J	Natl. Packing Co.	RB, JT

Witness No.	Witness Name	Company Name	Application Supported
701	Rush, E	Ebling Case Co.	JT
702	Moss, W I	Midwest Cold Storage	JT
703	Cassidy, J B	Chase Bag Co., Inc.	BO
704	Calvert, P E	Wilcox Electric Co.	BO, JT
705	Bender, L	C F Bender Co.	BO, JT
706	Lindley, J	Kansas City Western	JT
707	Fergerson, O O	Gustin-Bacon Mfg. Co.	BO, JT, RB
708	Burks, J	Coop Rose Growers	RB
709	Charles, B	Fairbanks Morse Co.	BO, JT, RB
710	Evans, G L	Amer. Greeting Corp.	JT
711	Cavender, C C	Hammons Products Co. Gravette Shelling Co.	BO, JT
712	Helchen, H	Sunflower Packing Co.	JT
713	Aldrich, F M	Hutchens & Son Metal	JT
714	O'Bryant, W J	MFA Packing	JT, BO
715	Moore, T D	Medart Lockers, Inc.	BO, JT
716	Swenson, H J	Brackett Stripping	BO
717	Starkebaum, A H	Henry Mfg. Co., Inc.	BO
718	Scates, J W	Conwood Corp.	H
719	Coulas, G A	Chemagro Corp.	BO
720	Dods, J E	Ampex Corp.	RB
721	Page, G J	Dana Parts Co.	RB
722	Rhynehart, J C	Nunn Mfg. Co.	RB
723	Mauldin, J	Blades Mfg. Co.	JT
724	Shannon, D	Metal-Fab, Inc.	JT
725	Brown, H D	Russell Stover Candy	RB

726	Gourley, H W	McBee Systems	BO, JT
727	Cain, R	Marley Co.	BO

Witness No.	Witness Name	Company Name	Application Supported
728	Frank, L J	Koch Refrigeration	BO
729	Minturn, C	Horn Trans., Inc.	JT
730	Davis, A	Carps, Inc.	JT
731	Hertz, H	Lee's Dresses	BO
732	Harmon, D M	Noel Water Co.	JT
733	Boswell, W	Elder Mfg. Co.	BO, JT
734	Barnett, F	Jamco, Inc.	JT
735	Barr, T	Harry G. Barr Co.	JT
736	Shirey, C	Shirey Co., Inc.	BO, S
737	Bevan, W	Cal-Dak Industries	BO, JT, RB
738	Burr, D L	Virco Mfg. Corp.	BO, JT
739	Farneaux, L	Chamberlain Schl Furn.	BO, JT
740	Watson, D	McDermott, Tom P.	JT
741	Ashmore, J	Goodner Van Co.	JT
742	Procter, G	Conley Corp.	JT
743	Collman, J	L. O. Hammons Mens Str.	RB
744	Harris, L	Gravette Shelling Co.	JT
745	Saxon, H R	Saxon's Alum. Irrig. Co.	JT
746	Alverson, R	Carpetland	JT
747	Amyx, B A	Texas Temp Glass Co.	RB
748	Thomas, R D	Traffic Signals, Inc.	RB
749	Hall, J C	Smith Tank & Eqpt. Co.	RB
750	Keith, E F	W. L. Somner Co.	RB
751	Newhouse, P R	Grapette Co., Inc.	BO
752	Russell, J E	James H Matthews & Co.	BO
753	Thomas, S	Metalines, Inc.	JT
754	Fish, W D	St. Regis Paper Co.	BO, JM
755	Bullock, C S	C.R.C. Crose Intnl.	JT
756	Grigsby, H	Grigsby Carpet Co.	JT
757	Watley, J	Laminates Unlimited	JT

Witness No.	Witness Name	Company Name	Application Supported
758	Thurston, D	Tyler Pipe & Fdry. Co.	RB
759	Leonard, R	Kearney Co.	RB, JT
760	Williams, J R	Phillips Supply Co.	BO
761	Robertson, H	Nelson Furniture Co.	JT
762	Rowland, B E	Bert's Window Screen	JT
763	O'Sullivan, W H	Carrier Air Cond. Co.	RB
764	Ouzts, L	Democrat Prtg. & Lith.	JT, BO
765	Ryle, W E	Ryle Mfg.	RB
766	Drew, J	Schevelle Homes Mfg.	RB
767	Driggers, M J	Raybeston Manhatten	BO, JM
768	Streber, V	Gibson Products Co.	JT

769	Caruthers, T A	Caruthers Refr. Co.	BO
770	Call, D	Univ. Distributors	JT
771	Fouse, C	Tobler Corp.	S
772	Belveal, F	Fashion Floors, Inc.	JT
773	Matthews, S A	R G Letourneau, Inc.	BO
774	Donnelly, P	Moldwood Plastic Prod.	JT
775	Smith, D L	Lebus Mfg Co.	RB
776	Van Poucke, M	Ralph Jones Co., Inc.	JT
777	McNeiland, S	James S. Kone Co.	RB
778	Hale, J M	Sterling Stores Co.	BO
779	Bogle, R L	Cash Wholesale Co., Inc. Walton Stores; Wal-Mart Strs	JT
780	McKinney, C	Blair Mills, Inc.	BO, JM
781	Fine, J O	Fine Truck Line	JT
782	Podulski, D	Mec-O-Matic, Inc.	BO

Witness No.	Witness Name	Company Name	Application Supported
783	Koch, C	Tulsa Trim Supply	JT
784	Couch, C	Std. Register Co.	JT
785	Pool, B	Alum Window Products	JT
786	Brantley, G	McGaw Labs, Inc.	BO
787	Allen, D	Allen Canning Co.	JT
788	Turner, B H	Arnold Cellophane Corp.	BO
789	Ellerd, S	Robertson Factories	JT
790	Payne, E M	Three Beall Bros.	RB
791	Moore, J	Webb Wheel Co.	JT
792	Akin, K L	King Candy Co.	S
793	Newsom, R E	Texas Refinery Corp.	JM, BO
794	Stash, R A	Regal Plastic Supply Co.	S
795	Rhyne, H G	Rhyne Floral Supply Co.	BO, JM
796	Ackles, G	Henson-Kickernick, Inc.	S
797	Westfall, G	Industrial Steel Bldg.	RB
798	May, C	Sunco Awning Co.	JT
799	Alpuente, E B	Sou Folder & Index Co.	RB
800	Odouj, P D	Roverside Furn Corp. Twin Rivers Furn. Co.	JT
801	Tuder, J B	White Stag Mfg. Co.	BO
802	Martin, A Q	Dittco Products Co.	RB
803	Guess, C	Williams Auto & Ind.	JT
804	Batchelor, E W	Nasco, Inc.	BO
805	Holt, M W	Jasper Fiber Products	RB
806	Parkhurst, B	Bert Parkhurst & Co.	JT
807	Dash, N	Sheila Shine, Inc.	BO
808	Neville, T P	Graham Magnetics, Inc.	RB

Witness No.	Witness Name	Company Name	Application Supported
809	Martini, E F	Ark. Whsle Dry Goods Variety Stores, Inc.	JT
810	Martini, G E	Martini Co., Inc.	JT
811	Whillock, J	Whillock Mfg. Co.	JT
812	Woodward, J	Kent Western Corp. Woodward Bros. Fixture Kent's Supermatic	JT
813	Boyett, G W	Metal Stampings Corp.	BO
814	Burleson, J E	Texas Coffin Co.	RB
815	Mead, P K	Stillwell Canning Co.	JT
816	Henry, J W	Cavalier Corp.	BO
817	Glaspie, J E	Nabors Trailers	RB
818	Flora, J L	Elkhart Products Corp.	JT
819	Alter, P	Shelley Mfg. Co.	BO
820	Waller, D	Waller Ford Co.	RB
821	Clinton, R	Lewis Bros.	JT
822	Cooper, W O	Nocona Boot Co., Inc.	S
823	Prince, C	Westinghouse Elec.	H
824	Raymond, G	Raymond Furniture Co.	JT
825	Huff, J	Louisiana Valve & Fittings	RB
826	Mooberry, J	M & M Equipment Co.	JT
827	Thompson, C	Harding Kindall Glass	JT
828	Schele, R	C R Anthony Co.	S, JT
829	Hensley, R C	Hensley Equipment, Inc. Hensley Elec. Steel	RB
830	Ferguson, W	Vulcan Steel Corp.	BO, JT
831	Henderson, R E	Henderson Coffee Corp.	JT
832	Tate, L	Industrial Supply Co.	RB
833	Lewis, C E	Hurley Co.	BO
834	Rogers, R T	Rogers Hdwe & Lbr Co.	JT
835	Wilhite, W C	Bonded Whse of Monroe	RB

Witness No.	Witness Name	Company Name	Application Supported
836	Haeberle, M L	Phillips Petroleum Co.	BO
837	Johnson, C A	Wilson & Co., Inc.	JT
838	Whitehouse, B	Whitehouse Plastics	S
839	Ogden, D G	Southern Supply Co.	RB
840	Wentz, M R	Ft. Smith Sash & Door Amer. Home Dealers Spl	JT
841	Lauderdale, S B	Mary of Puddin Hill	BO
842	Litteken, T H	T A Litteken & Sons	RB
843	Walters, J	General Business Forms	JT
844	Holtzen, L E	Citation Mfg. Co.	JT
845	Rountree, K L	Ozark Nurseries Co.	JT

846	Cunningham, G W	Grada Products, Inc.	BO
847	Yoes, E	Yoes Office Supply & Furn. Yoes Printing Co.	JT
848	Arnold, C A	Roto Swing Door Co.	JT
849	Bauman, C	Rothchild's, Inc.	JT
850	Rushin, S A	Rushin Upholstery Spl.	BO, JT
851	Brown, K E	Weldon Williams Lick	JT
852	Bryan, J E	Bryan Infants Wear	JT
853	Peques, P M	Rangaire Corp.	S
854	Sanders, H	Bunte Candy Co., Inc.	JT
855	Bolick, E A	Textiles, Inc., Threads, Inc.	BO, JM
856	Stibbe, E C	Pyramid Rubber Co.	RE
857	Cianella, F	Avco-Bay St. Abrasive	JM
858	Jenkins, D R	U S Stoneware, Inc.	RE
859	O'Leary, C	Proctor Silex Corp.	BO
860	Brousseau, J A	Tupperware Co.	JM

Witness No.	Witness Name	Company Name	Application Supported
861	Turner, B W	Std. Cap & Molding	BO, JM
862	Hussnatter, A	Monsanto Co.	RE
863	Devine, H T	Magla Products, Inc.	BO, JM
864	Templar, D L	Westbend Co.	BO
865	Cole, L B	Marks Handkerchief	BO
866	Loreto, A	Deluxe Topper Corp.	BO, JM
867	Novak, J L	Omack Inds.	JM
868	Saunders, A A	Benson-Saunders Spec.	RE
869	Socha, H	Phillip Morris, Inc.	BO
870	McKinney, J R	Texize Chemicals, Inc.	RE
871	Shue, P J	Pennsylvania Dutch Co.	JM
872	Fast, G L	Brown Co.	RE
873	Macon, T G	Sou Press & Filter	BO, JM
874	Page, J G	McNeil Labs., Inc.	BO, JM
875	Miller, J R	Tokheim Corp.	RE
876	Morgan, J P	Kenosha Auto Transpt.	RE
877	Noerr, D G	Noerr Motor Frt., Inc.	JM
878	Razook, T	Louis Hand, Inc.	JM
879	Soforenko, I S	Carol Wire & Cable	JM
880	Crooks, S C	Collyer Insul. Wire Co.	RE, JM
881	Lloyd, G H	Harry & Lloyd, Consultants Lite Control Corp. Wallace Candy Co. Schrafft's Candy Co. General Whlse Sply Co. Sharon Bolt & Screw Dynamics, Inc.	S

882	Barber, G E	Natl. Sponge Cushion	RE
883	Sweed, A T	Foxboro Co.	JM

Witness No.	Witness Name	Company Name	Application Supported
884	Deaver, F E	Moore Handley, Inc.	BO
885	Finger, A E	Nashua Corp.	JM
886	Fair, S J	Allis Chalmers Co.	BO
887	Cohen, M J	Spartan Dept. Stores	S
888	Locks, D M	Richmond Engr. Co., Inc.	BO
889	Bruens, A J	Rockwell Mfg. Co.	RB
890	Robishaw, W H	B.I.F. Industries	RE
891	McBrearty, C K	Dennis Mitchell Inds.	BO, JM
892	Conway, J F	Dunham-Bush, Inc.	JM
893	Cleckley, J	Pyle-National Co.	BO
894	Burbury, H	Pyle-National Co.	BO
895	Leslie, C P	Warner-Chilcott Div.	JM
896	Gerard, W C	Congoleum Narin, Inc.	JM
897	Goodman, R	Meridian Mfg. Co.	BO
898	Dickinson, D O H	Standard Hardware Co.	RE
899	Sutt, E	Colgate-Palmolive Co.	BO
900	Eastman, K	Yankee Distributors	RE
901	Copas, J W	Dymo Products Co., Inc.	BO, JM
902	Van Oort, M J	Hart & Cooley Mfg. Co.	RE
903	Pierce, W E	Dapol Plastics, Inc. Worcester Toy Co., Inc.	JM
904	Loubriel, J	Orangeburg Mfg. Co.	BO
905	Liddell, W A	Liddell Co.	BO, JM
906	Park, M T	Bearings & Trans Sply	RE
907	Baird, H	Ingalls Shipbuilding	RE
908	Beaver, H D	Revere Copper & Brass	BO
909	McGloshen, O V	Continental Mtrs. Corp.	RE
910	Cunningham, H	Goodyear Tire & Rbr	BO, RE
911	Myers, W G	Kinney Shoe Corp.	RE
912	Myers, Woodrow	Gamlen Chem. Corp.	BA

Witness No.	Witness Name	Company Name	Application Supported
913	Deangelis, J F	Max Eckardt & Sons	JM
914	Marsh, V M	Baltimore Paint & Chm. Synkloid Co. of Fla.	BO, JM
915	Morrison, C R	Koppers Co., Inc.	RE
916	Green, R E	United Chair, Inc.	BA
917	Wigglesworth, J G	McCrory McClellan Grn	BO, JM
918	Misener, J	Foster Milerburn Co.	RE

919	Carlson, H R	Monroe Intl., Inc.	BO, JM
920	Bacher, F J	Arrow Co.	RB
921	Helm, D S	Continental Copper	BO
922	Thomas, F W	Republic Steel Corp.	RE
923	Mickens, E F	Becton Dickinson	BO, JM
924	Parker, A	Claxton Bakery, Inc.	BO
925	Darsitano, R S	Wall Rope Works	RE
926	Babcock, J D	Berkshire Hathaway	JM
927	Gloster, G J	P Lorillard Co., Inc. Usen Products Co.	BO
928	Schmidt, M R	P Lorillard Co., Inc.	BO, JM, RE
929	Johnston, H R	Westinghouse Elec.	BO, JM
930	Talbot, C O	General Box Co.	BO
931	Bondura, R L	A B Murray Co.	BO, JM
932	Vaughan, M R	U S Plywood Corp.	BO
933	Powell, C K	Powell Truck Line Holt Truck Line	BO

APPENDIX C

Testimony of Public Witnesses Supporting the Applications

Clothing

Thirty-three of the witnesses who ship or receive clothing within the area involved in these applications testified supporting, in the aggregate, all of the applications except that of Deaton. Some of the witnesses support more than one application. Ten were called by Bowman and that carrier had the support of 16 of the witnesses; Red Ball called 6 and was supported by 7; Johnson 4 and was supported by 16; Herrin also called 4 and was supported by 5; Jones, Strickland, Roadway and Floyd & Beasley all called 2 witnesses each and were supported by 5, 4, 3, and 2 witnesses, respectively; and Baggett was supported by the 1 witness it called.

Eight witnesses testified with respect to their need for transportation service from manufacturers, warehouses, or suppliers of clothing at Atlanta to points or areas within Mississippi, Louisiana, Arkansas, Texas, Missouri and Memphis, Tenn.; and another from Birmingham to Texas, Louisiana and Mississippi points.[1] In the aggregate these nine witnesses support the applications of Herrin, Roadway, Red Ball, Strickland, Bowman, Johnson and Jones. From Atlanta they were presently using the services of Johnson, Bowman, Deaton, Roadway, Ryder, Dixie, Jack Cole, ETMF, T.I.M.E., Gordons, Transcon and Georgia-Highway Express. From Birmingham most of the same carriers were used and in addition, Campbell Sixty-Six. Some of the witnesses complain that the existing services, including those of applicants, are too slow and inconsistent, and

[1] Witnesses Nos. 6, 36, 49, 146, 148, 154, 272, 743 and 920.

that at times pickups are slow and tracing shipments is difficult. Other of these witnesses praise the existing services including those of both the applicants and protestants, and including both single and joint-line service. These nine companies ship or receive approximately 800,000 pounds of freight per month within the area noted, much of which is in small shipments of 100 pounds or less. Rush shipments often are sent by bus, parcel delivery service, or parcel post, depending upon the nature of the emergency and the rate-break weight involved in connection with motor

common carrier service. There is no indication at all of the lack of transportation services available to these shippers. Essentially they express preference for single-line service to a maximum number of points within the area as a means of eliminating time lost through interline, and minimizing tracing and claim problems.

Six of these witnesses testified concerning their need for service from South Carolina points (Seneca, Mauldin, Chester, Belton, Easley) and from Landis, N. C., and another with respect to his need for service from Mayoden, N. C., on traffic moving to Mississippi, Louisiana, Arkansas, Texas, Missouri and Kansas points.[2] Their testimony also relates to approximately 800,000 pounds of freight per month shipped from these origins.

The shipper at Seneca is served by a number of motor carriers. It now uses Ryder on approximately 50 percent of its freight going to Louisiana and Texas points and often uses joint-line services where single line is available as a matter of convenience in moving its freight from its shipping platform. The Mauldin shipper also at times uses joint-line services rather

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[2] Witness Nos. 64, 88, 424, 460, 629, 632, 554.

than the single-line services of Roadway or Ryder. It has not used the respective joint-line services of the applicants it supports. Each of these six shippers is served by a number of motor carriers. They support in the aggregate the applications of Bowman, Johnson, Roadway and Floyd & Beasley. Some have not used the services of the applicants supported, although they are authorized to originate their shipments, while others have used such services and found them satisfactory. Their main complaint of the existing service is that the transit time is slow. Two of the shippers also complain that Ryder and Roadway have failed to give a satisfactory service for pickup of their freight, have expressed no interest in handling their freight, and in fact have suggested that they use other services.

There is conflicting testimony with respect to the shipper at Chester. This shipper formerly depended upon Roadway as its primary carrier to the extent of about 150,000 pounds of freight per month. The witness complained that Roadway discontinued serving the Chester plant on the ground that its imbalance of freight made it impractical to furnish the equipment necessary for the volume of freight involved. The discontinuance of this service necessitated a complete rescheduling of

carrier services to its distribution area. The Roadway witness on the other hand claims that it was the shipper who discontinued using Roadway's service from the Chester plant because of some pickups made after the shipper's 3:00 p.m. deadline, and that Roadway has tried to recapture the freight. According to the Roadway witness this particular company is a valued account having used the Roadway service from both its Cleve land, Ohio and Chester, S. C., plants to the extent of approximately 2.7 million pounds of freight annually, two-thirds of which originates at the Chester facility.

The witness from Mayoden is supporting the Roadway application for single-line service to New Orleans and the Gulf area although it now has numerous joint-line services available including that of Roadway, as well as some single-line service. The shippers at Belton, Easley and Landis supporting the Bowman and Johnson Motor Lines applications now use Bowman as the origin carrier for a large portion of their freight to the area here involved; but along with the other witnesses they urge that single-line service schedules as proposed by these respective applicants will result in improved transit time and better overall transportation service.

Five merchants maintaining stores at Shreveport, La., Floresville, Tex., Oklahoma City, Dallas and West Monroe, La., testified that they need faster and more consistent transportation service for the receipt of their merchandise.[3] In the aggregate they receive about 14,000 pounds of freight per month. Four of them receive the bulk of their merchandise from manufacturers in the southeastern States much of which is routed through Atlanta. They have used the services of various origin carriers including Roadway, Bowman, Johnson, Ryder, Overnite, Transcon, and T.I.M.E. To some of the destinations there is a single-line service, but for the most part the transportation involves joint-line service, breaking over Atlanta, Memphis or Nashville. Two of these shippers support the proposed services of Strickland from Atlanta to Shreveport and to San Antonio (for further interline to Floresville); one supports the application of Herrin from Atlanta to Dallas and one that of Jones from Atlanta to Oklahoma City. The fifth merchant receives his merchandise from various points in Massachusetts, New York, New Jersey, Pennsylvania, the Carolinas and Tennessee, and he supports the applications of both Bowman and Johnson to extend their present services to West Monroe. In the

[3] Witness Nos. 316, 416, 533, 589 and 849.

past the latter witness has relied upon the suppliers to route the freight, and aside from one shipment which was routed via Johnson there is no indication that the witness has had any experience with the joint-line services provided by the carriers he supports for single-line service. These five witnesses have a considerable amount of transportation services available to them, some of which they have not used or were not aware of, and some of which provided them with admittedly pretty good service. They are of the view, however, that the proposed schedules of the applicants they support will be better than the services they are receiving and will benefit their business.

Two witnesses supporting service from Fort Worth to points in Georgia, Florida, Alabama and beyond ship a total of about 16,000 pounds of freight monthly to that area.[4] They have used several existing transportation services including that of Red Ball, Roadway, Mercury, Transcon, parcel post and REA, and complain of slow transit time. One knows of some interline services available, but has not routed his freight beyond the origin carrier, and the other has no knowledge of existing transportation services. Neither has specified the carriers supported (namely Bowman and Johnson, and one also supported the Jones application) in routing their freight.

Two witnesses who testified with respect to their need for transportation service from the New England, Middle Atlantic and Midwest territories to Greenville, Ala., and to Dallas, Tex., support the application of Roadway to the first destination and those of Bowman and Johnson to the latter.[5] They ship in the aggregate approximately 14,000 pounds of freight per month. One shipper has no knowledge of the available services nor why the joint-line service of the applicant it supports has not been tried. The other has numerous joint-line services available

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[4] Witness Nos. 362, 423.

[5] Witness Nos. 180, 361.

including that of the applicant it is supporting, which it has not used. They complain that the service they have received is slow, inconsistent and involves some difficulties in tracing shipments.

Four witnesses support the Bowman application for service from Cedartown and Augusta, Ga., and Chattanooga and Murfreesboro, Tenn., to points in Alabama, Mississippi, Louisiana, Arkansas, Texas, Kansas and Missouri, and from Dallas and Muskogee, Okla., to Murfreesboro.[6] The Cedartown and Chattanooga witnesses

also support the Johnson application, the latter in connection with service from its Pottsville, Pa., facility to points in these States. The Cedartown witness ships approximately 2½ million pounds of freight per month to this area and also has subcontractors located along the Eastern Seaboard which at times ship directly to points in those States but in a volume amounting to only about five percent of the Cedartown shipments. Although a number of carriers serve Cedartown, it uses Bowman on 99 percent of its shipments and finds such service excellent to the interline points of Atlanta and Memphis. However, beyond the interline points the freight is delayed and at times deliveries to the consignees are made in partial lots. The other three witnesses ship an aggregate of approximately 75,000 pounds per month within this area. They have available a number of motor carrier services, single line to some points and joint line to others. They have experienced slow and inconsistent transit time and delays in pickups. It is their belief that the proposed schedules of the applicants supported will improve their transportation service.

Three witnesses supporting respectively the Baggett, Jones and Floyd & Beasley applications, and one the Red Ball and

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[6] Witness Nos. 323, 676, 801 and 865.

Strickland applications ship an aggregate of approximately 120,000 pounds of freight per month within the area.[7] The witness supporting the Baggett application seeks service from Montgomery, Ala., to Dallas and Houston. He complains that the services being used are unsatisfactory in that the Roadway pickup at Montgomery is not dependable and that the West/Red Ball joint-line service is slow. Baggett's terminal is located near the plant and that carrier now handles about 80 percent of the shipper's freight. There is no information whether the shipper has any experience with Baggett's joint-line service to Texas points. The shipper expressed the view that the Baggett proposed service and schedules would improve transit time as well as simplify pickup and tracing problems. The witness supporting the Jones application is primarily interested in shipments from St. Louis destined to Florida points moving over the Atlanta gateway. There are many carrier services available between St. Louis and Atlanta, some of which have not been used because they have failed to solicit this shipper's freight. The shipper's support is based upon the proposition that the proposed Jones' second morning delivery to connecting lines in Atlanta will provide a third morning delivery of the freight at the north Florida destinations. The support of the Floyd & Beasley application by the Cisco, Tex., shipper is to reduce its present 3-line service between Cisco and Greenville, Ala., to a 2-line service.

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This freight generally moves in truckload quantities of about 24,000 pounds two or three times a month. The witness supporting the Red Ball and Strickland proposed services from Dallas to Greenville, Miss., is not using the existing Jones' service because of unsatisfactory pickups, and complains that at times Gordons, which it is using, fails to make its pickup prior

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[7] Witness Nos. 568, 730, 235, 275.

to the normal 5 p.m. closing time. Its volume of freight amounts to approximately 1,500 pounds per month.

These 33 clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its saleability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support.

Piece Goods Inbound—Clothing, Drygoods Outbound

Twenty-eight of the witnesses testified concerning the needs of their companies for transportation services to bring piece goods or supplies inbound to their plants and for the shipment of the finished articles outbound. In the aggregate they support all of the applications except those of Baggett and Deaton. Johnson Motor Lines and Jones called 5 witnesses each and each was supported by a total of 8 witnesses; Bowman called 3 witnesses and was supported by a total of 11; Strickland called 7 witnesses, Herrin 4, Red Ball 2, and Floyd & Beasley and Roadway 1 each and these carriers were supported only by the witnesses they called.

All of the witnesses except one receive piece goods from points in the Carolinas, Georgia, Alabama or Mississippi and about half also receive such material from points further along the Eastern Seaboard between Virginia and New England. This inbound freight amounts to more than a million pounds per month. The total volume of the outbound finished products moving to or through

the points involved in these applications is not disclosed although from the partial data available it may be concluded that it is considerably less than the volume of the inbound materials. For the most part the outbound shipments are destined to points in the South and southeastern States but in some instances move on into the Middle Atlantic and eastern States.

Eighteen of the witnesses receive inbound shipments at Texas points, including 10 at Dallas, 2 at Houston, and the others at Fort Worth, Greenville, Sulphur Springs and Denison (the latter three points being north and east of Dallas).[8] All but three ship clothing outbound and those three ship such finished items as towels, linens, draperies and blankets. Several of these witnesses were not experienced in traffic matters and had no knowledge of the transportation services available to meet their needs nor of what steps, if any, had been taken by their respective companies to obtain better transportation services. Some have not routed any of their shipments, some have routed only the origin carrier, and one routes only those in which freight forwarders' services are used. One witness supporting two applicants was not aware that between them they could now render a joint-line service to handle his freight. Others are supporting joint-line services of applicants which amount only to a change of the interline point at which the applicants will receive or

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[8] Witness Nos. 222, 278, 289, 298, 401, 407, 346, 419, 420, 457, 425, 268, 796, 736, 538, 539, 455, 697.

deliver the freight. These 18 witnesses have a number of transportation services available, some single line and some joint line.

Four of the 18 complained of incidents in which carriers had failed to make pickups promptly on their outbound shipments. One of these is located on a third floor and another does not begin calling the carriers for pickup until 3 p.m. and closes its plant at 5:30. For both of these shippers it appears that a cooperative effort with the carriers serving their plants may be helpful in solving this problem. A number of the witnesses complain of the failure of the carriers to render a consistent service. The one complaint common to these 18 witnesses is that the transit time of the existing service is slow, or at least it is their opinion that service conforming to the proposed schedules of the applicants they support will result in faster service that they are experiencing.

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Five of the witnesses support applications for the transportation of piece goods or yarn inbound to certain Arkansas points, and of clothing outbound.[9] These include clothing manufacturers at Magnolia, Cabot and Ashdown, Ark., and a hosiery manufacturer with plants at Fayetteville, Bentonville and Siloam Springs. The Magnolia witnesses want single-line service between the Magnolia plants and Chicago, Kansas City, Dallas, Atlanta and Birmingham. They believe that such service will provide faster and more consistent transit time for the receipt of supplies and for the outbound shipment of their finished products to those key cities and to points beyond. Both Southwestern and Red Ball maintain terminals at Magnolia; both provide single-line service to Dallas; and Red Ball also provides single-line service to Kansas City. The witness stated that the Red ball service was not satisfactory when last used some 6 to 9 months prior to his testimony.

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[9] Witness Nos. 414, 611, 481, 549, 132.

Neither of the carriers supported by the Cabot witness propose to serve Cabot, but under their respective proposals they will provide a joint line service with Little Rock rather than Memphis as the interline point. Similarly, the Ashdown witness is supporting a joint-line service via Shreveport. That type of service is now available, but the witness was not familiar with the existing transportation services. The witness supporting the Jones application for service between Atlanta and Birmingham, on the one hand, and, Fayetteville, Bentonville and Siloam Springs on the other, is now using Jones in a joint-line service, but prefers single-line to eliminate delays caused by interline. There are a number of other joint-line services also available as well as some single-line services not being used.

A manufacturer of bedding fabrics in Jackson, Miss., one of bathrobes in Meridian, Miss., and one of lingerie at New Orleans and Ponchatoula, La., receive piece goods primarily from points in the Carolinas as well as some from other points in the Southeast and East. [10] One does not route its inbound freight and has no experience using the inbound joint-line services of the carriers it is supporting for single-line service. Another in the past has used the joint-line service of the carrier supported and found it to be good, but is not now using it even though complaining that the service being used is slow and inconsistent. The third

is reasonably satisfied with the service being received both inbound and outbound, but wants an additional carrier, and also desires faster service. All have a number of other services available both inbound and outbound including some single-line services to a number of the points involved.

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[10] Witness Nos. 206, 897, 563.

Of the remaining two witnesses[11] one manufactures curtains and drapes with plants at Oklahoma City and Atlanta between which he ships approximately 5,000 pounds monthly in each direction, and also receives inbound shipments of piece goods at Oklahoma City from the Carolinas. He has single-line service available between Atlanta and Oklahoma City by two carriers but their transit time has not been satisfactory. Joint-line service available from the Carolinas also has not been satisfactory from the standpoint of transit time and consistency of service, although it has improved with the recent use of Bowman as the pickup carrier with interline to Jones at Memphis. There are numerous pickup carriers in the Carolinas which interline freight at Atlanta or Memphis. The other witness supports a proposed service for the transportation of clothing from Andalusia and Troy, Ala., to Fort Worth, Dallas, Houston, Beaumont, Orange and Texas City, Tex., and Baton Rouge, La., with the return of supplies from Orange and Brenham, Tex. The present joint-line services available are said to be not totally satisfactory because of delays attendant the interlining of the freight. Elimination of this delay will result in a much improved service. The freight is interlined over either the Birmingham or Mobile gateways.

The testimony of these 28 witnesses does not indicate any shortage of available transportation services to handle their freight. As with other witnesses they urged that faster transportation service is economically essential to their business in order to operate satisfactorily with minimum inventories, and that a more consistent service is needed for the maintenance of production lines and delivery schedules. Most indicate an anticipated growth in their business which will in turn require more and better transportation service. The support of the various applications by these witnesses is based largely upon their pro-

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[11] Witness Nos. 789, 234.

posed service schedules which the witnesses believe will be an improvement over existing services.

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Textiles

Thirty-five of the witnesses testifying as to their need for the proposed services of the applicants for the transportation of textiles are interested primarily in service from the mills to the finishing or product manufacturing sites. In the aggregate these 35 witnesses support all of the applicants except Deaton. Eleven of the witnesses were called by Johnson, Floyd & Beasley and Bowman each called 7 witnesses, Jones called 4, Roadway 3, and Strickland, Baggett and Herrin 1 each. Many of the witnesses support more than one of the applicants.

Sixteen of these witnesses testified on behalf of both Johnson and Bowman; 5 of the 16 also support the Jones application, 2 that of loyd & Beasley, and 1 that of Red Ball.[12] These witnesses can control the routing of well over 2 million pounds of freight per month. Three additional witnesses supporting Johnson alone, 2 supporting Bowman alone, and one supporting Strickland and Bowman also have a total of over 2 million pounds of freight monthly moving into the territory here involved.[13]

One of the 16 witnesses (also supporting the Floyd & Beasley application) is interested in the shipment of Mexican greige goods through the port of entry at Laredo, Tex., to Griffin, Ga., and various mill points in the Carolinas. He is now using rail service primarily because of difficulties encountered with motor carrier tariff restrictions against the applicability of through

[12] Witnesses Nos. 13, 28, 295, 128, 215, 216, 217, 243, 247, 258, 320, 331, 397, 402, 574, 631.

[13] Witness Nos. 76, 290, 926, 194, 731, 276.

rates to shipments involving more than a 2-line service, and also because of tracing and interline problems. He has not tried the existing 2-line services to many points of Ryder or Roadway through the Houston gateway, and expressed the opinion that a traffic manager should have the right to select whatever carrier he wishes.

The other 21 of this group of witnesses testified as to their needs for the proposed services of the applicants primarily from Carolina points, but also to a lesser extent for shipments originating in Georgia, Alabama, Gonzales, Fla., and points in the eastern States between Virginia and Massachusetts. Nine of them receive their shipments at Dallas, 1 at Taylor, Tex.,

1 at Jackson, Miss., and the others at various points in Texas, Oklahoma, Arkansas, Mississippi and Missouri. They use the services of numerous carriers, some in single-line service and others in joint-line. These include as origin carriers in the eastern States Roadway, Strickland, Consolidated Freightways, McLean, various carloading companies and shippers' association; from the southern points some of the origin carriers used are Roadway, Thurston, Bowman, Overnite, Ryder, New Dixie, Huckabee, and others.

Their common complaint against the existing service is that it is too slow and inconsistent. Two of the witnesses experienced the closing of their production lines because of lack of materials. Another complains of difficulties encountered with three-line service although acknowledging that some of the mills use a short-line affiliated motor carrier to originate shipments at the mills, notwithstanding the fact that there are numerous motor carriers authorized to serve the plants directly for shipments moving into the areas here involved which are capable of furnishing either single or 2-line service. Several of the witnesses

do not order supplies until after they receive orders for their custom-made products. Being seasonal products the order often specify a maximum delivery date and it is therefore urgent that they receive their supplies very promptly after the orders are placed. The evidence disclosed however, that a number of these witnesses place their orders through New York brokers who in turn order the materials from various mills, and the witnesses do not know from which mill they will receive their supplies. As a consequence they generally leave the routing of shipments up to the suppliers.

These 22 witnesses want as much single-line service as possible. Some have not tried the joint-line services of the applicants they are supporting for single-line service. There is no shortage of available transportation for these witnesses but they believe that a service conforming to the proposed schedules of the applicants they support will be an improvement over the existing services and will be of material assistance in reducing inventory costs, maintaining production schedules, increasing business, and in meeting the commercial needs of their customers and clients.

In addition to the 5 witnesses who supported the Jones application along with those of Johnson and Bowman, 2 other witnesses support the Jones application alone and 1 that of Bowman and Jones.[14] The two witnesses supporting

the Jones application alone receive piece goods at Springdale, Ark., and Tulsa, Okla., respectively. Each receives approximately 1,000 pounds of such goods per month from mills in the Carolinas, Georgia, or Alabama. One now uses the joint-line service of Jones over the Memphis gateway, and both are of the opinion that the proposed joint-line service of Jones over

[14] Witness Nos. 811, 852, 733.

the Atlanta gateway will be beneficial to them. The witness supporting both the Bowman and Jones applications receives monthly approximately 65,000 pounds of piece goods from the Carolinas at his Webb City and Carl Junction, Mo., plants (near Joplin). He now uses Jones and Campbell Sixty-Six as delivering carriers over the St. Louis gateway. He has never tried the existing Bowman/Jones service now available over the Memphis gateway, or the 2-line services available over the Joplin gateway. The witness believes that the use of Jones over the Atlanta gateway and Bowman over the Springfield gateway will result in improvement over the present transit time for this freight.

Besides the two witnesses supporting the Floyd & Beasley applications along with those of Johnson and Bowman, five other witnesses support the Floyd & Beasley application only.[15] The testimony of these witnesses relates to approximately 1.5 million pounds of freight per month moving to Texas and Louisiana points primarily from Alabama mills, with some also from South Carolina mill points and Chattanooga, Tenn. From the Alabama mill points Floyd & Beasley has been the predominant originating carrier interlining such freight with various other carriers such as Mercury, Ryder, Gordons, and others. Roadway and Ryder also have been used by these shippers both in single-line and joint-line service. One of the witnesses complained of damage to the cartons containing his freight which requires repacking the goods, and another complained of damage to the cargo. The latter, however, reported that he was correcting that problem through another carrier. One witness reported an occasional equipment shortage by Roadway; and all want faster transit time for their shipments. The witness controlling about 1.25 million pounds of this southwest freight per month ships a total of about 125 million pounds per year from its 12 Alabama mills and uses the service of Floyd & Beasley

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[15] Witness Nos. 110, 233, 237, 241, 545.

as the originating carrier for about 95 million pounds of that freight including the movement to Texas and Louisiana. Although other carriers' services are available the Floyd & Beasley service is the one used. These

witnesses believe that single-line service as proposed by Floyd & Beasley will improve their transit time and their general transportation service.

The Roadway application is supported for service from Utica, N. Y., Etowah and Elizabethton, Tenn., Coosa Pines and Childersburg, Ala., primarily to New Orleans and Mobile ports, and from Atlanta as well as some mill points in the Carolinas and Virginia, to Pensacola, Gonzales, Mobile, New Orleans, and Baton Rouge.[16] The companies supporting that service ship over 12.5 million pounds of freight per month to those destinations. From some of the origins Roadway's proposed service is joint-line. These shippers have numerous carrier services available including those of some of the applicants and they use many of them. However, they have found the existing services not entirely satisfactory from the standpoint of transit time, especially with respect to New Orleans and Mobile destinations and support the Roadway application for additional service as proposed in its application. A third witness supports the Roadway application from Gonzales, Fla., to points in Illinois, Indiana, Michigan and Ohio.[17] Again there are numerous services available, some of which have been used and some not used. Among the services not tried include the joint-line services of some of the applicants who are being supported by this same company for service from Gonzales to points in the south and

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[16] Witness Nos. 139, 142.

[17] Witness No. 862.

southwestern States. The witness expressed his preference for the proposed single-line service of Roadway.

The witness supporting the Baggett application for service from Columbus, Ga., to Dallas, Fort Worth and Houston[18] uses the single-line services of Roadway and Ryder and the joint-line service of Dixie ETMF, Herrin, or Red Ball. He ships about 70,000 pounds of fabrics per month to the Dallas-Fort Worth area and a considerably lesser amount to Houston. He has found the service of Dixie ETMF good and also is aware of other single-line and joint-line services. The witness supporting the Herrin application for service from Atlanta (as a gateway point for joint-line freight) to

Dallas now uses the services of Roadway, Transcon, ETMF, and Mercury.[19] Approximately 5,000 pounds of textiles per month are involved. He is of the opinion that both the Roadway and Transcon schedules call for overnight service from Atlanta to Dallas and complains that he is not receiving such service. He supports the proposed second-day service of Herrin.

From the foregoing it will be noted that these 35 witnesses are not without transportation services. Most complain that the services which they are using are too slow and too inconsistent to meet their needs. Some have been less than diligent in investigating the availability of existing transportation services or in trying other routings to obtain more satisfactory service. A belief that service conforming to the schedules as proposed by the applicants they support will result in improved transit time for their shipments forms the primary basis for their support of the various applications.

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[18] Witness No. 163.

[19] Witness No. 478.

Toweling—Bedding—Curtains—Upholstery

Fourteen of the witnesses supporting in the aggregate all of the applications except those of Deaton and Red Ball testified with respect to their need for the transportation of toweling, bedding, curtains and upholstery materials and related items. Johnson called 5 of the witnesses and was supported by a total of 8 (one of whom also supported the Jones application); Bowman called 2 witnesses and was supported by 7; Baggett and Strickland also called 2, and Herrin, Floyd & Beasley and Roadway 1 each and were supported only by their own witnesses.

Johnson and Bowman received support from three witnesses for the transportation of toweling, linens and related items from Startex, S. C., to Dallas, Fort Worth and Houston, from Kannapolis, N. C., to Dallas, and from Belton, S. C., to points in Mississippi, Louisiana, Arkansas, Texas, Missouri and Kansas.[20] One of these also receives at Dallas shipments of golf carts and parts from Charlotte. Two other witnesses supporting the Strickland application for service out of Atlanta to Houston, Sequin (50 miles east of San Antonio) and Mesquite receive shipments of similar items and of mattress covering and ticking from suppliers in the Carolinas, Georgia, and Fairfax, Ala.[21] The total volume of this

freight amounts to approximately 155,000 pounds per month. These five witnesses now use the single-line service of Ryder and Roadway to some points and many of the joint-line services now available, for example, using as origin carriers Thurston, Overnite, Georgia Highway, Youngblood, G & P, Hennis, New Dixie and others, and as delivering carriers Herrin, Central, Transcon and ETMF. One of the witnesses describes his present

[20] Witness Nos. 178, 405, 780.

[21] Witness Nos. 48, 527.

service to Sequin, Tex., as good, but he favors an additional carrier for competitive reasons. Another who had used the single-line service of Roadway from Kannapolis and Charlotte to Dallas up to about two years ago now uses the joint-line service of Johnson or Bowman as origin carriers and ETMF as delivering carrier. He favors the proposed 2-day single-line service of the applicants supported. Two of these witnesses have not tried the joint-line services of Bowman or Johnson as originating carriers to Texas, Louisiana, Mississippi, Arkansas or Missouri points, one being unaware that Johnson is now authorized to perform a single-line service to New Orleans. One also complained of Ryder's 3-line tariff restriction affecting the application of through rates and stated that its sales activity in Louisiana and Mississppi had been substantially abandoned because of poor transportation service. This witness has used 2- and 3-line service where single-line service is available. All complain that present transit time is slow and would be improved if the applicants were authorized to operate as contemplated in their proposed schedules.

The Baggett application is supported by two witnesses,[22] one for service from Montgomery, Ala., to Dallas and the other from Centre, Ala. (23 miles northeast of Gadsden), to Texas points. They manufacture bedding items such as pillows, mattresses and covers, pads, etc., and furniture and bedding binding tapes. They ship about 36,000 pounds of such materials monthly to Texas points. From Montgomery the shipper has used the single-line service of Roadway but because of difficulties in obtaining pickup service from that carrier now uses primarily the joint-line service of Baggett or A-OK and their respective connections. The pickups for the joint-line service have been very good. The witness was not informed as to service beyond the origin carrier. From Centre the shipments are originated primarily by Baggett and some by a local carrier and

[22] Witness Nos. 285, 634.

are interlined with connections over the Birmingham gateway. The shipper has not used Baggett's service over the Mobile gateway

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for interline with Red Ball or other carriers serving Texas points, nor has he routed the freight via the Memphis gateway. He prefers to have single-line service for his shipments.

The other two witnesses testifying with respect to their transportation needs for the shipment of bedding items support respectively the application of Roadway from New Orleans to points in New England, Central, and Southern territory served by Roadway, and those of Floyd & Beasley, Johnson and Bowman for service from Westminister, S. C., to Louisiana, Texas, Arkansas, and Mississippi points.[23] These witnesses are not critical of their present service but are interested in having additional single-line services available. They ship approximately 140,000 pounds monthly from these origins to the areas noted.

Five of the 14 witnesses testified concerning their transportation needs for the movement of drapery, curtain and upholstery materials.[24] Three support the Johnson and Bowman applications (one of whom also supports Jones), a fourth supports Johnson alone, and the fifth supports the Herrin application for service from Columbus, Ga., to various points in Louisiana, Arkansas, Texas and Memphis. The latter witness ships approximately 200,000 pounds of upholstered materials monthly to the specified area. He has several transportation services available some of which are not used. Ryder is used to Mem-

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[23] Witness Nos. 14, 660.

[24] Witness Nos. 191, 370, 498, 501, 878.

phis, Shreveport and as a connecting carrier to Arkansas points, Roadway for some single-line services, and Dixie is used to Louisiana points and also as a connecting carrier with Herrin to Texas points. He has not used the services of Bowman, Baggett or Johnson for some time, nor has he routed freight over the Atlanta gateway. He complains of unsatisfactory transit time and failure of carriers to observe routings. Support of the Bowman, Johnson and Jones applications is based upon satisfactory transit time on shipments originating in the Carolinas, Georgia, Pennsylvania, New Jersey, New York, Massachusetts, and New Hampshire to Dallas and Houston, and for the Johnson application alone from Fall River, Mass., to points in Louisiana, Mississippi and Texas. The latter service involves approximately 150,000 pounds of curtain and drapery materials per month to the three States. The witness supporting that service does not want to use any carrier for his less-than-truckload shipments (ranging from 200

to 600 pounds each) which routes the freight through a break-bulk point prior to interline. In the past he has used the services of forwarding companies, Strickland, McLean, and others. There are other available services which he has not used including Johnson's joint-line service. One of the witnesses uses bus service for about 60 percent of his materials but would prefer a lower cost truck service if transit time were satisfactory; another, who is not particularly dissatisfied with the transportation services used, has made no investigation as to what other services are available.

As for these 14 witnesses there is a substantial amount of transportation service now available for their use; most have not tried some of the existing services or have not tried them for some period of time; some are not critical of their existing service but favor any improvement and more service; and some of

the services being used involve circuitous routing. The principal complaint of these witnesses about their present service is that it is slow and inconsistent.

Thread, Yarn, Miscellaneous

Six witnesses testified with respect to their need for transportation services for the movement of thread and yarn and six for the movement of some miscellaneous textile items. In the aggregate they support all of the applicants except Roadway and Baggett. Bowman called 5 of the witnesses and was supported by 1 other; the remaining applicants each called 1 witness. Johnson was supported by a total of 5 witnesses, Red Ball and Jones 2 each, and the others by only their own witness.

Six witnesses shipping approximately 750,000 pounds of yarn and thread monthly within the area here involved support in the aggregate the applications of Deaton, Jones, Red Ball, Floyd & Beasley, Bowman and Johnson.[25] The Deaton, Jones and Red Ball applications are supported for service from Atlanta to Dallas or from Dallas to points in Arkansas on U. S. Highway 82. The shipper supporting these applications is now using the joint-line trailer interline service of Deaton Jones over the Greenville, Miss., gateway from Atlanta to Dallas and has found that service satisfactory. Although he is aware that there are single-line services available he is not familiar with them. On shipments from Dallas to Arkansas points Southwestern and Jones are used to their respective points and the shipper also is aware that there are other carrier services available.

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About 98 percent of the freight of the shipper supporting the Bowman, Johnson and Jones applications for service from

[25] Witness Nos. 61, 255, 111, 428, 703, 855.

Marion and Sevier, N. C. (35 to 40 miles east of Asheville), to Dallas moves in truckload lots and now primarily in piggyback service. The witness for this shipper was not aware of any single-line service now available. His objections to the rail service are that some delay is encountered in accumulating two trailerloads before moving the freight, and that at times the rail service requires four days instead of its scheduled three-day service. The Bowman and Johnson applications also are supported for service from Gastonia, N. C., to points in Arkansas, Louisiana, Mississippi, Texas and Missouri and that of Bowman alone for service from Lowland, Tenn. (located in eastern Tennessee), to Kansas City. The latter operation involves approximately 3,500 pounds of freight per month moving in one of several available joint-line services. The witness complains that it is too slow. He favors a single-line service. There are numerous transportation services out of Gastonia which are used by the witness supporting the Bowman and Johnson applications. These include both joint- and single-line service, some of which is stated to be satisfactory. The principal complaint of this witness is that he considers the service to some Mississippi and Texas points to be too slow and inconsistent to meet his transportation requirements.

Support of the Floyd & Beasley application is for service from Bon Air, Ala. (40 miles southeast of Birmingham), to Dallas. Shipments are made daily to Dallas and occasionally to Terrell and Forney, Tex., using the joint-line service of Floyd & Beasley ETMF. Floyd & Beasley is the originating carrier for most of this shipper's freight and the witness was of the opinion that the single-line service proposed to Dallas will result in faster and more consistent service than the present joint-line service. ETMF will continue to be used as the delivering carrier to Terrell and Forney.

Three witnesses who ship or receive wiping waste support the applications of Johnson and Bowman for service from

Charlotte to points in Louisiana, Mississippi and Texas, and from Atlanta to Houston (Herrin also is supported for the latter service).[26] Approximately 50,000 pounds of freight per month is involved. From Atlanta they now use the single-line service of Roadway and from Charlotte the services of Bowman, Roadway, Ryder, ET&WNC and Johnson. Both Ryder and Bowman spot

trailers at Charlotte for the shipper's loading convenience and as a result the shipper sometimes uses the joint-line services of those carriers when single-line service is available. The complaints against the existing services are that transit time is sometimes slow, that the Charlotte shipper has experienced shortages and lost freight, and that Roadway's pickup service at Charlotte is slow. There are available to these shippers other single-line and joint-line services which they are not using.

A coffin manufacturer who receives approximately 3,000 pounds per month of piece goods, coffin handles and related hardware in Waco and Amarillo, Tex., from suppliers in Atlanta supports the Red Ball application; and a manufacturer of roofer's mops and supplies, rope, roofing yarns and textiles at Atlanta who ships approximately 30,000 pounds of such materials monthly to Arkansas, Louisiana, Mississippi and Texas points supports the application of Strickland.[27] The former now uses Transcon in single-line service to Amarillo, and T.I.M.E. or Transcon as origin carriers and Red Ball, Red Arrow or Southwestern as delivering carriers at Waco. The witness for this shipper complains that the transit time on his shipments is slow. However, he has never specified routing for his shipments and he is unaware of other existing single-line and joint-line services

[26] Witness Nos. 497, 506, 618.

[27] Witness Nos. 814, 450.

available to him. The Atlanta shipper now uses Gordons, Roadway, Transcon and ETMF to Texas points, Dixie to Mississippi points, Ryder to Shreveport and some Mississippi points, and ETMF and its connections to Arkansas points. His support of Strickland is based upon that carrier's proposed overnight service to Jackson and Greenville, Miss., and second morning delivery at other points. He is of the opinion that such service would be faster and more consistent than that he is now receiving.

The Bowman and Johnson applications also were supported for the transportation of ribbon and bows used in gift wrapping from Dallas to Chattanooga, Tenn., Rock Hill, S. C., South Hill, Va., and Brooklyn, N. Y., and supplies inbound from Chattanooga to Dallas.[25] To Brooklyn this shipper is using Yellow Transit and has no complaint as to that service. It is now using Gordons as its originating carrier to other points and also as delivering carrier of the inbound supplies. There have

been very few complaints as to that service. Previously it has used the service of ETMF. The shipper prefers single-line service both for better transit time and to minimize damage to his shipments.

These 12 witinesses support single-line service as a means of improving transit time and minimizing tracing difficulties and loss and damage claims. They all have available transportation services other than those being used, some of which they have never tried, or have not used in a long period of time, some of which has been satisfactory, and some of which they were unaware. They have not shown a need for additional services as proposed by the applicants supported.

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[25] Witness No. 294.

Signs, Displays, and Showcase Equipment

Six of the supporting shippers[29] are interested in the movement of commodities falling within this category. One each was called by Roadway, Strickland, Jones, and Johnson and the remaining two were called by Bowman. One of the Bowman shippers also supports Strickland, Johnson, and Jones and the other also supports Johnson. The Johnson shipper also supports Bowman.

A decorating company at Atlanta has occasion to move about 35 less-than-truckload shipments every six months from Atlanta to Mobile and New Orleans and has regularly utilized the services of Johnson for such movements. Complaint is made that Johnson's service has been less than adequate because of delays in transit and failure to make pickups promptly but no attempt has been made to utilize other services known to be available for movements between these three principal points. The service of Roadway has been used in dispatching shipments to points on the Eastern Seaboard and elsewhere. This service has proved entirely satisfactory and is desired for use in connection with the Atlanta-Mobile and Atlanta-New Orleans traffic here considered.

One witness has a place of business at Birmingham and receives from three to five less-than-truckload shipments of sign materials a year from Houston and Atlanta. During a 23-month period in 1964 and 1965 it received only two shipments from Atlanta and four from Houston. As of the latter part of July 1966 it had received no shipments from Houston since December 1965 and none from Atlanta since February 1964. The witness has heretofore

[29] Witness Nos. 92, 160, 261, 603, 659, and 667.

utilized the services of Baggett out of Atlanta and those of Mercury out of Houston, but complains that the services of both, to the limited extent used, were unsatisfactory from the standpoint of delivery time. In spite of this, no attempt has been made to utilize the numerous other services available for movements from Houston or Atlanta to Birmingham.

One rather substantial producer of outdoor electric signs and display materials at Dallas ships its products to points in the southeastern States and to some extent to points along the Eastern Seaboard as far north as New York City. It now uses the services of Strickland, Transcon, and Mercury on most of its eastbound shipments, either in single-line or connecting line services and has also made some attempt to use the services of Red Ball, Herrin, and Roadway. Mercury has been used for shipment to Georgia, Florida, and the Carolinas, either directly or with interchange at Birmingham, and Florida traffic has also been routed, at least out of Dallas, by Transcon, Red Ball, and Herrin. Strickland has been utilized for most deliveries along the Eastern Seaboard north of the Carolinas. The company is here supporting the applications of Strickland, Johnson, Jones and Bowman in an attempt to obtain (1) better pickup service, (2) better tracing service, and (3) proper handling of shipments to prevent damage in transit or incidental to interchange of lading enroute. Transit time is frequently important to this shipper, particularly in the case of large and cumbersome signs which must be scheduled for delivery coincidental with the arrival of unloading and erecting cranes and the opening of new service stations and other facilities. Some of the signs produced are over-height for ordinary ban-type equipment and high-cube and open-top units are required for their transportation. Prompt pickup service is said to be necessary in order that signs may be loaded on trucks as they come off the assembly line, thus eliminating a certain amount of additional handling at the Dallas plant. The desire for better pickup service also embraces situations where special types of vehicles are required

to meet over-height loading requirements and the carriers called upon do not have such types readily available. Shipper believes that better tracing service and less likelihood of damage incidental to transfer of lading would result if single-line service were available. In this connection, shipper is not aware of all of the single-line service available to it in the territory. Although it has only a limited amount of traffic destined to eastern seaboard points north of the Carolinas and although Strickland's single-line service to such points appears to have been reasonably satisfactory, it is supporting another carrier for authority to perform such service because the availability of more service would mean the availability of more equipment at Dallas for outloading.

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The company at Marked Tree, Ark., which supports only Jones, produces education equipment such as chalkboards, display cases, and also pool tables, which it ships to customers in Alabama, Georgia and Florida. In 1965 it moved 380,000 pounds of this material to points in Alabama, 500,000 pounds to points in Georgia and 125,000 pounds to points in Florida. Its individual shipments range in weight from 300 to 400 pounds. It operates four trucks of its own in private carriage. All outbound traffic tendered to common carriers is now turned over to Jones. Two other motor carriers also serve this plant, but their services have not been satisfactory. Jones' service is used to Memphis with an interline at that point to Bowman for Atlanta, Birmingham, and points in Alabama and Georgia which Bowman serves directly. Points beyond Atlanta and Birmingham not served by Bowman are again interlined with such carriers as Gordons, Herrin, Jack Cole, ETMF, Tamiami, and Howard Hall. The Jones/Bowman service is described as very good but the company would prefer to have the proposed Jones single-line service for movements into Atlanta and Birmingham, for direct service into such points and for interline

service into Florida and other points beyond Atlanta and Birmingham.

An advertising firm at Jackson, Miss., which supports Bowman and Johnson, receives inbound shipments of sign panels weekly from Baltimore, such shipments varying in weight from 230 to 6,100 pounds. Its shipments are all originated by Mason & Dixon and are delivered by such carriers as Ryder, West, and Deaton. The connecting line service is said to have been unsatisfactory from the standpoint of transit time, with delays attributed to those incidental to the interlining of its shipments enroute from Baltimore. It has not attempted to utilize a single-line service which was not heretofore known to be available nor other connecting line service known to be available. It supports the two named applicants for single-line service in the hope of speeding its present deliveries out of Baltimore.

A company engaged in producing store display fixtures at Charlotte, N. C., supports the applications of Bowman and Johnson to obtain better delivery service to its customers in Texas. It is now using the services of Bowman and Johnson as well as those of Thurston, ETMF, Ryder, Roadway, and Red Ball for the handling of 10,000 to 12,000 pounds a month of its products moving into Texas. During the period February 24 through October 4, 1966, it made some 144 shipments by motor vehicle to points in Texas, most of which were picked up by protestants Thurston and Ryder, but some 40 shipments were originated by Bowman or Johnson. The company appears to have made some use of the services of

Roadway but has had trouble getting prompt pickup service from that carrier. Although it supports Bowman and Johnson in the hope of obtaining single-line service into Texas, it is apparent that even with the proposed extensions of these carriers the ma-

jority of the Texas deliveries would be subject to interline service. It has had no difficulty in obtaining prompt pickups from Bowman and Johnson and would prefer their services, even with interchanges, because the interchanges would take place in Texas, which is said to be preferable to the company.

The support of these shippers, all of which are concerned with the movement of less-than-truckload traffic, is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments. Such an assumption is not justified, particularly in instances where, as here, the efficient handling of less-than-truckload shipments, even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination. Aside from this aspect of the matter, it is clear that the proposals supported will not result in the elimination of all of shippers' interline difficulties. Even if such proposals are approved they will still have to rely upon interlining service to accomplish a substantial portion of their delivery requirements. More important is the fact that for the most part these shippers are seeking to substitute routings of their own choosing, not only for the services now being used but also in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous. For example, the sign manufacturing company of Dallas is supporting a number of carriers for services into Florida, its principal volume State, through the medium of an interchange at Atlanta or Birmingham when it has the direct single-line service of Herrin available to points in northern Florida and has made little use thereof. The territory here considered is provided with an abundance of transportation facilities.

Pharmaceuticals

Twenty-five witnesses are manufacturers, shippers, or receivers of pharmaceuticals, toilet preparations, patent medicines, drugs, and sundries. Of these witnesses, Red Ball called 11 and was supported by 1 other. Johnson called 6 witnesses and was supported by 3 others.

Bowman called 3 and was supported by 7 others. Jones put on 1 witness and was supported by 2 others. Herrin put on 1 witness and was supported by 1 other. Strickland called 2 witnesses and Roadway 1 and these latter two applicants were supported only by their respective witnesses. Collectively these 25 witnesses have from 1.5 to 2 million pounds of traffic per month moving within this area.

Twelve of the above witnesses[30] testified as to shipments between Atlanta and one or more points such as Dallas, Houston, and Fort Worth, Tex.; Vicksburg, Jackson, Greenville, Natchez, and Gulfport, Miss.; Alexandria, Baton Rouge, Shreveport, and Lafayette, La.; Mobile, Northport, and Birmingham, Ala. Two of the 12 ship in truckload quantities while the other 10 have less-than-truckload shipments. The motor carrier services of six of the applicants herein are used to move the traffic of these 12 shippers as well as 17 other carriers authorized to serve these points. The most common complaint is that transit time is too slow. Other complaints are poor pickup service, delays at interchange points, damage to merchandise, and poor claim service. Emergency shipments to drug stores and hospitals require expedited service and in some instances protection from heat or cold may be required. Such service is not always available and presents somewhat of a problem especially on joint-

[30] Witness Nos. 8, 54, 56, 67, 80, 124, 147, 189, 489, 607, 654, 655.

line service. Practically every shipper desires single-line service to speed up delivery and keep handling of merchandise to a minimum.

One shipper from Chattanooga[31] with gross sales of $10 million a year ships thousands of less-than-truckload shipments to points in Louisiana, Mississippi, Missouri and Kansas. It supports Bowman because the present interline service is considered too slow and it would like single-line service. It presently uses Ryder, Bowman, Robinson, and ET&WNC. Ryder requested that it not be given shipments to Mississippi or the Carolinas. Its primary interest is to Louisiana and Mississippi points. Even if authority sought is granted interline service will still be required to most of the Mississippi points.

Two of the less-than-truckload shippers from Dallas to Jackson and other points in Mississippi and to points in Florida, Georgia, Alabama, Tennessee, and North Carolina presently use Mercury, Transcon, Red Ball, Roadway, Herrin, Consolidated, Gordons, Jones, Lee Way, and parcel post.[32] They complain of time in transit,

delays in deliveries, damage to the merchandise, and problems in tracing. A single-line service is desired, but they were not aware of certain single-line service now available. Many of their shipments are designated as "will call" for terminal station pickup by the consignees.

Six shippers from Hammonton and Morris Plans, N. J., Bridgeport and Milford, Conn., Richmond, Va., Brookfield, Mo., Buffalo, N. Y., and Fort Washington, Pa.,[33] ship approxi-

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[31] Witness No. 198.

[32] Witness Nos. 246, 384.

[33] Witness Nos. 300, 325, 696, 874, 895, 918.

mately 400,000 pounds each month to such points as Dallas, Atlanta, Birmingham, New Orleans, Mobile, Pensacola, and other points in Mississippi, Louisiana, and Texas. Many of the shipments to Dallas are truckload whereas to most of the other points they are less-than-truckload. Over 27 different carriers are used in these operations including five of the applicants, mostly in joint-line service. These shippers prefer single-line service and complain generally of slow transit time, tracing problems, damage to the lading, and in some instances protection from the cold was not available.

A Texarkana, Tex., shipper[34] who ships approximately 8,000 pounds per month to Birmingham and Atlanta and receives about 5,000 pounds per month from Atlanta has no complaint of the service received from ETMF. He supports the Red Ball application for additional carrier service between these points.

A Milledgeville, Ga., drug company supports the Bowman application for single-line service to move its products to a company warehouse at Dallas and to public warehouses at Houston, Little Rock, and Kansas City.[35] It has used the services of REA, and also of Brown, Tamiami, Overnite, and Bowman as origin carriers with interline to numerous connecting carriers including ETMF, Gordons, Transcon, Mercury Freight, Roadway, T.I.M.E., Herrin, Ryder, and Yellow Transit. It complains of excessive damage but does not know whether the carriers or warehouses are responsible.

Two wholesale drug companies, one located at Monroe, La., and the other maintaining inventories at Dallas, Fort Worth, Houston, Beaumont, and Shreveport receive less-than-truckload shipments from East Coast suppliers and to some extent from

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[34] Witness No. 431.

[35] Witness No. 786.

suppliers at points in the Southeast.[36] Neither has any knowledge of the

available transportation services and both leave the routing of their shipments up to the suppliers. One receives its shipments primarily from freight forwarders. Both consider their present service slow and expressed the view that the proposed single-line services of the applicants they support would provide better service

There is considerable transportation service available to these 25 shippers or receivers of freight which they have not tried. Several have made no investigation of available services and do not route their shipments. In some instances, a less-than-truckload protective service from the heat or cold may be needed which even the applicants would be unable to provide; in other instances the authority sought if granted would be used very infrequently. The availability, consistency, convenience, cost and speed of transportation service are factors taken into account by the shippers in determining the carriers to be used. These shipper witnesses have failed to show a need for additional carrier services. Their support of certain applicants is based largely upon the applicants' proposed schedules.

Wire

Ten witnesses who ship or receive wire testified in the aggregate in support of all of the applications except those of Baggett and Red Ball. Bowman, Johnson, and Jones called 2 witnesses each, and Herrin, Roadway, Deaton, and Floyd & Beasley called 1 each. Some witnesses testified on behalf of more than one applicant.

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[36] Witness Nos. 630, 433.

Five witnesses support service from the eastern origins of Holyoke, Mass., Pawtucket and Lincoln, R. I., and Hillside and Linden, N. J., to points in Mississippi, Louisiana, Texas, and Arkansas, and one of the five also supports the Bowman and Jones applications in connection with service from Florence, Miss (10 miles southeast of Jackson), to points in Alabama, Florida, Georgia, South Carolina, Virginia, Pennsylvania, and New York.[37] Their testimony relates to over 500,000 pounds of freight per month. Three of them supporting both the Roadway and Johnson applications use their services in other areas, and propose to use one as a backup carrier service for the other; and one also proposes to use them as a backup service for water transportation. These three have no particular complaint against their existing transportation services although one is of the opinion that the additional authority will enhance its use of the

carrier's stopoff service for partial unloading. The other two witnesses complain that their pickup service is unsatisfactory and the transit time too long (including the transit time of the applicants supported). All five have other motor carrier services available which they are not using.

The remaining five witnesses seek additional services in the aggregate from Chattanooga and Atlanta to Dallas, Fort Worth, and Houston, Tex., and Baton Rouge, Lakes Charles, and Monroe, La.; from Houston to Atlanta and Jackson; from Dallas to southeast and east coast points; from Chicago to Birmingham; and from Birmingham and Houston to points in Alabama, Mississippi, Arkansas, Louisiana, Texas, Oklahoma, Kansas and Missouri.[38] They ship or receive a total of over 175,000

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[37] Witness Nos. 391, 446, 879, 880, 921.

[38] Witness Nos. 112, 396, 518, 553, 575.

pounds of freight per month. Two of the five are not familiar with the carrier services available to them, and the others are aware of services available which they have not used. Among the carrier services being used by these witnesses are those of five of the applicants and eight of the protestants. The complaints about those services relate primarily to slow transit time, poor pickup service, and tracing difficulties. One witness complained that a slow transit time on one shipment caused loss of a customer.

The testimony of these 10 witnesses fails to evidence a need for additional motor carrier service.

Fencing and Tubing

Nine witnesses who ship or receive fencing or tubing testified in support of all of the applicants except Herrin, Roadway and Floyd & Beasley. Deaton called 3 witnesses, Red Ball 2, and Baggett, Strickland, Bowman and Jones 1 each. Some testified in support of more than one applicant.

Three witnesses supporting the application of Deaton and one that of Red Ball propose to use the services of those carriers for the transportation of fencing from Houston to Birmingham.[39] Approximately 40,000 pounds of fencing and fence materials per month are involved. All of these witnesses operate their own equipment in private carriage and use common carriers

for some less-than-truckload shipments. Two have made no investigation of the available transportation services; one who uses several carriers acknowledges that he receives good service; and one is using joint-line service when single-line is avail-

[39] Witness Nos. 108, 195, 652 and 525.

able. One witness who complains of an occasional pickup delay has no loading platform and uses a tow motor in his yard for loading purposes.

Five witnesses testified with respect to their transportation needs in the movement of tubing (steel, copper, brass, or aluminum). A witness supporting the Baggett application for service from Decatur, Ala., to Texas points ships approximately 600,000 pounds monthly to Houston, Beaumont, Dallas and Fort Worth, and one supporting the Jones and Bowman applications for service from Birmingham to points in Arkansas, Louisiana and Mississippi ships approximately 55,000 pounds monthly to points in those States.[40] The former is using the single-line service of Gordons to Dallas and Fort Worth, Ryder to Houston, and the joint-line services of Baggett and Mercury and their connections to other points. He has not tried the Baggett joint-line service to Texas points over the New Orleans gateway. His only complaint of the existing services is that at times, the carriers (including Baggett) are unable to furnish the necessary equipment (open-top trailers) upon demand. The other witness is using the services of Gordons, Ryder, Dixie, Mercury, West, and ETMF. For the most part, the services of these carriers is satisfactory and the witnesses has made no investigation as to the availability of other carrier services. His support is based essentially upon the proposed overnight service of these applicants to certain points in the three States.

A witness supporting the Strickland application for service from Dallas to Birmingham and Atlanta and points beyond ships about 2,000 pounds monthly to that area, and one supporting the Red Ball application for service between Kansas City, Mo., and Birmingham, and from Birmingham to points in Arkansas and Texas ships approximately 8,000 pounds monthly.[41] The former is using the services of Gordons, Trans-

[40] Witness Nos. 69 and 637.

[41] Witness Nos. 351, 699.

con, Roadway, Mercury, and Red Ball, and the latter uses Gordons and Campbell Sixty-Six between Kansas City and Birmingham and ETMF for shipments out of Birmingham to Arkansas and Texas points. This witness complains of slow transit time and poor tracing service. He wants a single-line service

between Kansas City and Atlanta which will assure not later than third morning delivery.

The witness supporting the Bowman and Johnson applications for service from Union, N. J., to points in Arkansas, Louisiana, Mississippi, and Texas has not used the joint-line service of Johnson, nor the Harris-Ryder service in the past because their solicitors have not called upon him.[42] He has found that his recent use of Bowman as an origin carrier has largely eliminated his complaint of poor pickup and tracing service. He supports any carrier that will offer more service for his shipments.

These nine witnesses have ample transportation services available most of which is reportedly satisfactory according to their own standards. Three have made no investigation to determine the available service. Support of the respective applicants is based largely upon the desire for additional single-line services, and for faster transit time which the witnesses believe may be available through the schedules proposed by these applicants.

Fastners, Nuts, Bolts

Seven witnesses supporting six of the applications testified as to their need for the proposed services in connection with the transportation of such items as metal connectors, fastners, screws, nuts, bolts, and related articles.

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[42] Witness No. 931.

Four of the witnesses support in the aggregate (1) the Bowman application for service from Miami to points in Arkansas, Louisiana, Mississippi, Texas, Kansas and Missouri, and points beyond; (2) that of Jones for service from Atlanta and Birmingham to Fort Smith; (3) that of Red Ball for service from Birmingham to points in Arkansas, Texas, Louisiana and Mississippi; and (4) the Herrin application for service from Dallas to Atlanta for interline to Americus and Vidalia, Ga.[48] Their testimony relates to approximately 220,000 pounds of freight per month.

The Miami witness is shipping by Bowman, Ryder, and Central as origin carriers with their various connections. He desires single-line service to as many points as possible to avoid delays at interline points. He complains

primarily that Ryder's pickup service is poor and that at times when the shipments are not ready on the carrier's first pickup call it fails to return for the pickup prior to closing time. The Fort Smith witness is using Gordons' single-line and the joint-line services of Bowman/Mercury Motors over the Memphis gateway from Atlanta; and from Birmingham he is using Gordons and Campbell Sixty-Six. He has not used the joint-line service of Bowman Jones over Memphis. He too, complains of an occasional delay in pickup and would like the faster transit time that may be available through single-line service. The witness supporting the Red Ball application out of Birmingham is using Campbell Sixty-Six, Gordons, Ryder, West, Mercury Freight, ETMF, Dixie, Transcon, Eagle and Deaton. His only complaint is that at times Campbell Sixty-Six fails to make a second pickup when requested. The Dallas witness supporting the Herrin application has made no investigation as to what transportation services are available to Atlanta for interline to

[48] Witness Nos. 593, 803, 53 and 274.

Americus and Vidalia. The service of ETMF to Atlanta has been satisfactory.

Three witnesses support in the aggregate (1) the Roadway application for service from High Point, N. C., to Alabama, Florida, Mississippi and Louisiana points; (2) that of Johnson from Lenola, N. J. (Moorestown), to points in Louisiana and Texas, and from Statesville, N. C., and points in Connecticut to Jackson, Miss. (the Bowman application also was supported by the witness for this latter service).[44] Approximately 100,000 pounds of freight per month is involved. From Statesville and High Point, N. C., originating carriers are Johnson, Carolina Freight Carriers, Thurston, Ryder, ET&WNC; and from Connecticut points the originating carriers are Strickland, McLean, Eastern Express, and Carolina Freight Carriers. From Lenola, N. J., Roadway and Johnson are used in both single- and joint-line services. These witnesses complain that transit time for their shipments is slow and they prefer single-line service as being more convenient, faster, and providing easier tracing. One witness supporting the Bowman application has not tried that carrier's joint-line service out of the Carolina origins, and another supporting the Johnson application has not used the Harris/Ryder service out of Lenola, nor Johnson as a connecting carrier over the Atlanta or New Orleans gateways for service to Texas and Louisiana points other than Baton Rouge.

These seven witnesses have available numerous carrier services, some of which they are using with reasonably satisfactory results, and some of which have not been tried.

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Valves, Pipe, and Fittings

Twenty witnesses who ship or receive valves, pipe, and fittings testified in the aggregate in support of all of the applica-

[44] Witness Nos. 453, 867 and 550.

tions except those of Floyd & Beasley and Baggett. Red Ball called 6 witnesses, Roadway, Strickland and Jones 3 each, Herrin and Bowman 2 each, and Deaton 1. Some witnesses supported more than one applicant. Marking or tagging of the individual pieces of a shipment of these commodities is difficult. As a result, the witnesses desire to have available an abundance of single-line carrier services in order that separate shipments may be given to different carriers to avoid mixing of shipments and loss and tracing difficulties.

Five of the six witnesses called on behalf of Red Ball support service from Houston, Tyler, Nacodoches, Texarkana, Tex., and Shreveport, La., to Atlanta, Birmingham and Greenville (Miss.), and the sixth from Birmingham to Houma, La., and Wichita Falls, Kemay, Graham, Electra, and Perryton, Tex. (in northwest Texas).[15] These six witnesses ship or receive over 535,000 pounds of freight monthly in this service. One also ships about 1 million pounds per month to other points in the States of Mississippi, Alabama, Georgia, Florida, South Carolina, and North Carolina, some of which may involve using the three named points as gateways for interlining the freight. Approximately 50 percent of the latter witness' freight is handled by special commodity carriers. Red Ball originates all shipments for the Nacogdoches witness, and the others shipping to Atlanta and Birmingham use one or more of the single-line services of ETMF, Ryder, or Roadway. On shipments from Birmingham, Mercury Freight is the originating carrier with Red Ball or Merchants as delivering carriers. Two of the witnesses have no complaint about their service to Atlanta and Birmingham, but in general the witnesses support the proposed additional services of the applicants as a means of obtaining faster and more consistent transportation and facilitating tracing of shipments.

The Jones application is supported for service between Tulsa, on the one hand, and, on the other, Atlanta and Birmingham

[15] Witness Nos. 349, 432, 524, 758, 825, 832.

and points beyond; also (along with the Bowman application) from Bessemer, Ala., to West Monroe, La., Pensacola, Fla., Houston, Memphis, and several points in Mississippi and Arkansas; and from Chicago to Bessemer.[46] Between Tulsa, Birmingham, and

Atlanta, the witnesses use the single-line service of Transcon or T.I.M.E.; also the joint-line services of Campbell Sixty-Six or Gordons as originating carriers and Jones as delivering carrier for service from Atlanta and Birmingham to Tulsa. Other joint-line services are available. From Bessemer the witness uses ETMF, Mercury Freight, Campbell Sixty-Six, West, Ryder, Bowman, and Roadway. The Bessemer witness requires open-top equipment for some shipments and finds that such equipment is not always immediately available upon demand. The witnesses complain of shipping delays or slow transit time. Approximately 75,000 pounds of freight monthly is involved in the testimony of these witnesses.

The Roadway application is supported for service from Atlanta, Stowe, Pa., and Barberton, Ohio to points along the Gulf Coast area proposed to be served by Roadway.[47] Over 300,000 pounds of freight monthly is involved. These witnesses have available and are using a large number of motor carrier services. The Atlanta shipper has only one loading door and complains that when the pickup carriers fail to adhere to his schedule of pickups it causes congestion and blockage of his production line. The Barberton shipper has both single-and joint-line services available and uses both. He complains of slow transit time. His transit time study shows a 4th day or better delivery on about 54 percent of the shipments to Louisiana points but it does not include any shipments handled by Roadway and its

[46] Witness Nos. 674, 755, 806.

[47] Witness Nos. 185, 220, 561.

connections. The Stowe shipper accumulates freight for specific areas until there is a sufficient quantity to warrant making the shipment. He too has a number of joint-line carrier services available, some of which he has not tried. He had considered his service satisfactory until checking out his transit time for purposes of this hearing. He wants a single-line, faster transit service.

The Strickland application is supported for service from Houston to El Dorado and Fort Smith, Ark., Jackson and Greenville, Miss., Birmingham, Atlanta and Tampa, and from Dallas (Plano) to points in Mississippi, Alabama and Georgia; those of Bowman and Johnson are supported for service from Houston and Baton Rouge to Pensacola and from Thomasville and Charlotte, N. C., to Dallas[15]

Approximately 130,000 pounds of freight monthly is involved. The Dallas shipper supporting the Strickland application, who now uses Strickland and its connections, complains that Red Ball discontinued its daily call for pickup and now requires a specific request for service, and that Mercury Freight, Transcom and Gordons do not serve the plant directly. The Houston shippers, who use a number of different carrier services, complain of late pickups by some carriers and of slow transit time. They do not know whether the carrier services they use are joint-line or single-line, and have made no investigation as to the single-line services available to specific points. The other witnesses have not tried a number of joint-line services available preferring to use the single-line service and avoid interlining delays. Similarly, although complaining of slow transit time between Dallas and Thomasville, N. C., the witness for that service prefers to continue with the single-line service being used rather than try the numerous joint-line services available.

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[15] Witness Nos. 250, 383, 491, 503, 645.

The remaining three witnesses support respectively the Deaton application for service from Atlanta to Baton Rouge, Monroe, and Shreveport, those of Herrin, Johnson, Bowman and Strickland for service from Nacogdoches to Atlanta, and the Herrin application for service from Opelousas, La., to points in Mississippi, Alabama, Georgia and Florida.[49] The Deaton witness is using the service of Johnson and its connections over the New Orleans gateway. Ryder does not solicit his business and he has not used the single-line service of that carrier to these points in the past six months. He wants single-line service and faster transportation for his shipments. On the shipments from Nacogdoches to Atlanta, Red Ball is the originating carrier with various connections used over the Shreveport and Memphis gateways. The witness has not used Herrin's present joint-line service. While he wants Herrin's single-line service, his support of the Johnson, Bowman and Strickland applications is for their proposed joint-line services. The Opelousas witness represents a new business. He uses the daily pickup service of Herrin and supports its application for extension of its authority. He complains that both Red Ball and Ryder have failed to make any pickups at the plant in the 8 weeks he has been with the company. He is using Herrin's joint-line service to points Red Ball or Ryder could make in single-line service as he finds Herrin to be a dependable carrier. He ships regularly once or twice a week to his Atlanta warehouse. Herrin now has authority to serve Atlanta by way of Macon.

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Support of the applications by these witnesses is based primarily upon their desire for faster and more consistent transportation, better pickup service, and as much single-line service as can be made available to them. They have a number of carrier services available some of which they have not tried.

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[49] Witness Nos. 51, 59, 605.

Castings

Fourteen witnesses who ship or receive castings testified in the aggregate, in support of all of the applicants except Roadway and Johnson. Red Ball called 4 witnesses, Deaton and Jones 3 each, and Herrin, Floyd & Beasley, Strickland and Baggett 1 each. Some witnesses supported more than one applicant.

Five of the 14 support service for shipments originating at Birmingham and Sylacauga, Ala., and Chattanooga, Tenn., destined to Baton Rouge, La., or Texas points, particularly Houston and Orange, and a sixth receives shipments at Noel, Mo., from Birmingham.[50] Approximately 140,000 pounds of freight monthly is involved. From Birmingham they use Ryder to Baton Rouge, ETMF or Mercury Freight to Texas points, and Eagle to Noel. From Chattanooga, Baggett, Bowman and Robinson are used as origin carriers with open routing beyond. The witness for the latter service has made no investigation as to available single-line services. From Sylacauga Baggett and North Alabama are the origin carriers with Ryder or Mercury Freight as delivering carriers. Four of the six have no complaint against the service they are using. The Sylacauga witness complained that Ryder, who at one time gave good service, has discontinued making pickups at his plant and as a result he has only joint-line service available. The witness from Noel wants single-line faster service from Birmingham with deliveries made at specified hours to meet work crews.

Of the other eight witnesses, seven testified with respect to shipments moving to Atlanta and Birmingham or points beyond, and one from Wichita Falls, Tex., to Greenville, Miss.[51] The latter uses through trailer service for 75 percent of his freight and has only 6 or 8

[50] Witness Nos. 24, 57, 581, 582, 651, 732.

[51] Witness Nos. 338, 354, 378, 385, 609, 705, 829, 889.

less-than-truckload shipments per year for which he is urging single-line service to reduce transit time and lessen loss possibilities. A total of approximately 1,265,000 pounds of freight monthly is involved in the service requested by these eight witnesses.

One supporting service from Kansas City to Atlanta is using several carriers and complains of inconsistent transit time and slow pickup service by one carrier. This witness, who has no loading dock, has other single-line services available which he has not tried, and he made no criticism of one of the single-line services being used. Another witness supporting the Strickland application proposes to use Strickland primarily in connection with shipments moving from Shreveport to Cedartown and Savannah, which will be a joint-line operation. He now uses ETMF or Ryder and their connections, and has made no investigation as to other available services. Support for the Red Ball and Herrin applications for service between Alpine City, La., on the one hand, and, Atlanta, Birmingham and points beyond on the other, is based primarily on the proposition that the volume of freight involved warrants additional single-line service. However, the preponderance of the freight involved moves inbound from eastern origins and can be handled by the applicants supported only in a joint-line service.

Two witnesses supporting the applications of Jones and Red Ball for service from their Russellville, Ark., and Sulphur Springs, Tex., plants to Birmingham and Atlanta and points beyond, now use their service as well as that of others as origin carriers. Their support is based upon a desire to reduce 3-line service which they are using to 2-line service. The record shows that there is now available 2-line service by the carriers supported over other gateways.

The evidence of these 14 witnesses discloses ample transportation services available to them. Some have no complaints of the service being used, some have services available which they

have not used, and others want more transportation service available, particularly single-line service. A dissatisfaction with their present services seems to be a desire for a faster and more consistent transportation than they are experiencing.

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Miscellaneous Metal Articles

Forty-eight witnesses who ship or receive miscellaneous metal articles not readily classified in any of the other categories, testified in the aggregate in support of all of the applicants. Red Ball called 11 witnesses, Bowman 9, Roadway and Deaton 6 each, Strickland 5, Jones 4, Herrin, Baggett and Johnson 2 each, and Floyd & Beasley called 1 witness. A number of the witnesses support more than one applicant. These 48 witnesses have transportation services available. Some use a number of different carriers, some are not aware of the extent of the services which are available, and some have no complaint of the service they receive. In general however, they want faster and more consistent transportation service, and single-line service from origin to major points. They believe that those ends can be substantially accomplished through the proposed operating schedules of the respective applicants they support. Most of their shipments are in less-than-truckload quantities.

The 11 Red Ball witnesses ship or receive over 300,000 pounds of freight monthly.[32] Five of them are interested primarily in service from Birmingham to various small Texas points which Red Ball now serves, or to Mississippi or Louisiana points. These witnesses receive knocked-down steel buildings and parts, cast iron or cast aluminum articles, etc., and desire a consistent transportation service with which they can coordinate the delivery of freight with their work crews. In this con-

[32] Witness Nos. 187, 347, 434, 514, 542, 682, 765, 775, 797, 802, 842.

nection they favor single-line service as a means of better controlling consistent transit time and tracing, and to reduce the damage potential for some items such as frames and cast iron products. These witnesses are now using such carrier services as Mercury Freight, ETMF, Ryder, Jack Cole, Eagle (for truckloads), Red Ball, Central, Gordons, Campbell Sixty-Six and others, some in single-line and some in joint-line service.

The other six witnesses support Red Ball's proposed service from such points as Paris, Bonham, Longview and Wichita Falls, Tex., Monroe, La., and Littleton, Colo., to Atlanta, Birmingham, or Greenville (Miss.), or points beyond. The Longview witness has no complaint about his present service, but wants another single-line service available. Roadway makes daily pickups for the Bonham

witness performing good service to Atlanta, and its spots a trailer daily for the Paris shipper whose primary destination point is Atlanta. These two shippers use the joint-line service of Red Ball and its connections to other points. They believe that the proposed single-line service of Red Ball will result in faster and more consistent service. There is both single-line and joint-line service out of Littleton, and the present service out of Wichita Falls is joint-line. The witnesses supporting those services again prefer the proposed Red Ball single-line service for the reasons mentioned.

The nine witnesses called by Bowman ship or receive monthly within the area here involved approximately 210,000 pounds of such items as steel signs and panels, prefabricated steel structures, pumps, compressors, shelving, drip pans, trays, baskets and carts, cast iron foundry items, and alloy steel products.[53]

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[53] Witness Nos. 371, 461, 532, 687, 709, 752, 769, 830, 891.

Five of the nine also support other applicants and in turn Bowman receives support from four witnesses within this group called by other applicants. All of these witnesses support the Bowman application with the objective of obtaining faster transportation of their freight, and some also seek some more single-line service.

Two of the Bowman witnesses ship from Kansas City, one to Atlanta and points within 200 miles of Atlanta, and the other to points in Tennessee, Alabama, Georgia, Florida, North Carolina, South Carolina and Virginia. The former is satisfied with service to Georgia and Alabama points, but is not completely satisfied with the service to Florida destinations. Both use the services of Gordons, Watson-Wilson, Roadway and Transcon, in single-line and joint-line service and have other services available such as Campbell Sixty-Six, Jones, ABF, and Western Gillette. There is no indication that these witnesses have used the joint-line service of Bowman to Florida and other destinations.

Another witness supporting the proposed service from Houston to Atlanta, Birmingham, Mobile and Gulfport now uses Roadway, Red Ball, Herrin, Mercury Freight and Ryder. He is not informed as to what single-line service may be available other than the Roadway service to Atlanta. A witness receiving at Vicksburg, Miss., an aggregate of about 500 pounds of freight monthly from Wilkes-Barre, Pa., and Atlanta, in joint-line service supports the proposed single-line faster schedules of Bowman. Two other witnesses, one shipping freight

from Birmingham to points in Mississippi, Arkansas, Louisiana, Texas and Kansas, and the other receiving shipments at Dallas from Chattanooga, Tenn., McBee, S. C., and Cartersville, Ga., have an abundance of joint-line service available. Their interest lies in obtaining the proposed single-line service of Bowman.

The remaining three Bowman witnesses support its proposed service from Dallas to Florida points, from Searcy, Ark., to points in Alabama, Georgia, Florida and Tennessee, and from Philadelphia to points in Arkansas, Mississippi, Louisiana and Texas. The latter witness (who also supports Jones) uses primarily freight forwarder service, but also uses Bowman, Johnson and Strickland and has no complaint about the Bowman joint-line service in this area. He has not tried the Johnson joint-line service through New Orleans to Texas points. He is aware of several single-line services available which he has not tried. He has limited loading space (three doors) and is interested in minimizing the number of carriers serving him. The Searcy, Ark., shipper is satisfied with the service of Powell as originating carrier, but would like to interline his freight (bronze cemetery monuments) with Bowman at Little Rock. The Dallas shipper is using a number of carriers who give reasonably adequate service. He believes that his transit time would be improved with the proposed single-line service of Bowman to Florida points.

The six witnesses called by Roadway support its proposed service in the aggregate from eastern or midwestern origins served by Roadway to the Gulf Coast area proposed to be served.[34] The freight includes such items as gasoline pumps, steel doors, frames, lockers, industrial piston rings, shaft couplings, motors, air registers, diffusers, etc., and one of the six supports the return of tow bars, saddle mounts, and similar items from the Gulf Coast area to Fort Wayne, Ind., and Springfield, Ill. Approximately 1.7 million pounds of freight per month is involved. These witnesses have numerous joint-line services available which they are using, and some have single-line services available. For the most part only joint-line service is available between Roadway's proposed Gulf Coast points and midwest points, and the parties using those services com-

[34] Witness Nos. 922, 915, 907, 902, 876, 875.

plain of slow transit time, poor tracing, and delays and damage resulting from interline. They express a preference for single-line service. From the eastern origins to the Gulf Coast destinations there are both joint-line and single-line services. One witness supporting the proposed single-line service of Roadway complains that

Johnson's single-line service is unsatisfactory because of poor pickup service. However, he has no objection to using Johnson if the pickup service is improved, nor would he object to trying the Harris-Ryder service if that carrier solicited his freight and explained the service to him. Certain witnesses support the Roadway application as a means of obtaining more consistent service which would be beneficial in attempting to coordinate delivery schedules with work crews. These six witnesses have an abundance of transportation services available and their evidence fails to show a need for additional service.

The six witnesses supporting the Deaton application (one of whom also supports Strickland and Bowman, and another Baggett and Bowman) ship or receive within the area here involved over 2.4 million pounds of freight monthly.[55] Four of the six are interested in service from Birmingham or Cullman, Ala., to Houston. The Cullman witness ships mostly truckload and uses the through trailer service of McComb/Mercury Freight with the interline taking place at Birmingham. Although indicating he would like a faster service, he has no knowledge of the transit time he is experiencing and has made no investigation of the services available. The Birmingham witnesses at times need open-top or flat-bed equipment. They use the services of such carriers as Eagle, Superior, Ryder, Mercury Freight, and Baggett, and one uses rail TOFC service, or private car-

[55] Witness Nos. 12, 58, 60, 105, 106, 192.

riage if a stopoff service is involved. Although indicating they would like faster service, they have little information concerning the services being used or those available.

The two witnesses supporting service from Birmingham and Gadsden to points in Louisiana, Arkansas, Mississippi, Texas, Missouri and Oklahoma control the major volume of the freight here involved. Service from Gadsden to Louisiana points is considered excellent by one of the witnesses; the other knows of no single-line service from Birmingham to Baton Rouge. One described the service from Birmingham to Mississippi points as excellent. He has not tried a number of the single-line and joint-line services which are available. Gadsden is served by 15 carriers, and most of the freight from that point moves in truckload quantities and over irregular routes. While these two witnesses ship very large quantities of freight and one contemplates considerable

growth, there is no showing that the existing services are incapable of meeting their transportation needs.

Five witnesses called by Strickland ship or receive such items as stainless steel bars, steel storage tanks and parts, galvanized and aluminum gutter and rain pipe, etc., steel bathtubs and lavatories, steel chain, jugs and jug caps, totaling over 400,000 pounds monthly.[56] Approximately half of this volume consists of the galvanized and aluminum forms shipped from Dallas to points in Alabama, Mississippi and Louisiana, 90 percent of which is moving in private carriage. This shipper uses private carriage because (1) the freight is highly susceptible to damage from excessive handling, (2) it is cheaper, and (3) because of limited dock space. He has not tried some single-line services which

[56] Witness Nos. 17, 157, 244, 284, 337.

are available. If the Strickland application is granted he may use more common carrier service than at present.

Another witness shipping from Dallas and Hearne to Atlanta, Birmingham and Mississippi points, mostly in truckload quantities, also uses private carriage, especially where a number of dropoff shipments are involved. He has found existing common carrier service to Birmingham to be very good, but considers Gordons' service to Greenville, Miss., to be circuitous (via Memphis). Another witness shipping from Atlanta to Houston and Dallas complained of slow service in connection with two shipments transported by Roadway and Transcon. He is aware of other single-line services available which he has not used.

One witness supports Strickland's proposed service from Birmingham to Arkansas and Mississippi points to handle shipments from a new plant not yet in operation. He has made no investigation of the existing transportation services. Another witness shipping from Ruston, La., to Atlanta and Alabama and Mississippi points (also supporting the Herrin application) believes that these applicants will afford a more consistent single-line service than is now available. He is served by Red Ball, Herrin, Ryder, ETMF, Braswell and Cavanaugh Motor Lines. In addition to these five witnesses called by Strickland three others called by other applicants also testified on behalf of Strickland.

The remaining 11 witnesses ship or receive such items as metal cabinets, lockers, athletic equipment, springs, stampings, building products, steel footwalks,

bobbins, tools, pumps, bars, store fixtures, grinding wheels, etc.[37] Their testimony relates to an estimated 775,000 pounds

[37] Witness Nos. 119, 236, 339, 386, 426, 578, 745, 812, 857, 686, 715.

of freight per month moving in this area. Four witnesses called by Jones ship or receive freight moving from Atlanta to Fayetteville, Ark., from Birmingham to points in Arkansas, Kansas, Missouri and Oklahoma, and from Greenwood, Miss., to Birmingham, Atlanta and points beyond. One is interested in having available single-line service from Birmingham to Lincoln, Ark., as a possible replacement for his private carrier operations. From Atlanta and Birmingham the service of Transcon, Gordons, Campbell Sixty-Six, or Cole and their respective connections are generally used, and from Greenwood Campbell Sixty-Six is used to Birmingham, and its connections for points beyond. Gordons' single-line service also is available to Atlanta. Their support essentially is for the single-line service and schedules as proposed by Jones.

Two of these 11 witnesses support the Baggett application, one for service from Springville, Ala., to the Dallas and Houston areas and the other from Dallas to Huntsville. The former handles his truckload or stopoff shipments by private carriage and uses Baggett and its connections for the smaller shipments; and the latter uses both Gordons' single-line service and Red Ball's joint-line service to Huntsville. Springville also is served by Halls and McComb, and there are numerous joint-line services available from Dallas to Huntsville which the witness has not tried, including that of Baggett. The products of these two witnesses are susceptible to damage and it is their opinion that the proposed single-line service of Baggett will tend to reduce damage to their freight.

The witness supporting the Herrin and Strickland proposed service from Atlanta and Birmingham to Dallas acknowledges that he is receiving reasonable good service from ETMF, Gordons, Mercury Freight, Roadway and Transcon. Another witness supporting the Herrin application from Jackson to Houston is using either Red Ball in single-line service or West/Herrin joint-line. He has made no investigation of other services that

may be available. The witness supporting the Floyd & Beasley application, especially for single-line service between Houston and Sylacauga, Ala., is using various joint-line services. He is not aware of any single-line service available.

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The other two witnesses support the Johnson application for service from two Massachusetts origins to Houston or to Port Gibson (Mississippi). One is aware of other available service both joint-line and single-line which are not being used and the other is not aware of a number of joint-line services which are available.

These 11 witnesses have transportation services available. Their support of particular applicants is based primarily upon their belief that single-line service conforming with the schedules proposed by the respective applicants will be a convenience and will result in improved transit time for their freight.

Shoes, Leather Goods and Related Accessories

Seventeen witnesses who ship or receive leather items such as shoes, boots, belts, saddles, western apparel, handbags and related articles and accessories within the area involved in these applications supported in the aggregate all of the applications except those of Floyd & Beasley and Deaton. Of these witnesses Roadway called 4; Baggett and Strickland 3 each, Bowman and Herrin 2 each, and Red Ball, Johnson and Jones 1 each. Except for the witnesses called by Johnson and Jones, both of whom supported the Johnson, Jones and Bowman applications, the witnesses supported only the applications of the carriers calling them. Their support of the respective applications is primarily to get single-line service to as many points as possible as a means of obtaining faster and more consistent transportation service. Several of the witnesses were not aware of existing services, and

others had not tried such services. Some were using joint-line service where single-line is available.

Seven of these 17 ship or receive freight from Texas origins.[55] These include five testifying with respect to freight originating at Dallas and Fort Worth (one of which also originates freight at Houston and Laredo), one from Ferris (near Dallas), and one from Nocoma in north Texas. From these origins the freight is destined primarily to Greenville and Jackson, Miss., Mobile, Montgomery and Birmingham, Ala., Atlanta, Ga., Pensacola and Miami, Fla., Chattanooga and Nashville, Tenn., points in Arkansas along U. S. Highway 82 and to other points in the States named beyond those key cities as well as to points in the Carolinas. Somewhere in the

neighborhood of 40,000 pounds of less-than-truckload freight per month is involved in these shipments. Single-line services now are available from most of these origins to the major destination cities. For example, to Atlanta and Birmingham some of the parties are now using the services of Gordons, Transcon, ETMF, Mercury Freight, and Roadway; Red Ball to Mobile, and Braswell to Jackson. Joint-line services are available to other points. Four witnesses indicate no complaint of the existing service but one favors more competition as a means of improvement. Two others using joint-line service support proposals for single-line service, and one now using a joint-line service supports another such service. One of the witnesses complains of slow transit time and excessive loss and damage, and another of poor pickup service although admitting that he has no loading platform and his place of business is located in a highly congested section of downtown Dallas.

Three of the witnesses support the proposed Roadway service from Allston and Wakefield, Mass., and Camp Hill, Pa., to

[55] Witness Nos. 123, 254, 372, 594, 373, 445, 822.

points along the Gulf Coast between Pensacola and New Orleans.[59] They ship an aggregate of about 62,000 pounds of freight per month to this area. Two have limited shipping dock space and are anxious that Roadway, which they use in joint-line services, be authorized to handle these shipments in single line. One complains that Johnson's and Strickland's service to the Gulf Coast area is too slow and inconsistent although it uses Johnson to other points. The other also uses Johnson to some points but for convenience reasons does not use the existing Johnson service to the Gulf Coast area. The third uses a car-loading service for about 40 percent of his shipments, and also uses R. C. Motor Lines and Akers in their respective joint-line services. This shipper was not aware of the existing single-line service of Johnson to the Gulf Coast area. It discontinued using Johnson's service altogether sometime ago because of a claim settlement dispute.

Another witness supporting the Roadway application for service from Nashville and Fayetteville, Tenn., to Pensacola, Mobile, Birmingham, Baton Rouge and points in those States beyond the key cities, ships approximately 25,000 pounds of freight per month to that area. The same company also is supporting the Baggett application for service from Huntsville (shoes) and Florence (under apparel), Ala., to Houston, Beaumont, Texas City and

Dallas and other points in southeast Texas.[60] It ships approximately 300,000 pounds of freight monthly to Texas points from Huntsville and Florence. This shipper's primary complaint against the existing carrier services (including both single line to some points and joint line) is inconsistency. It views consistency of service in providing supplies to retail stores as normally

[59] Witness Nos. 304, 515, 911.

[60] Witness Nos. 219, 673.

more important than speed inasmuch as inventory can be arranged to fit reasonable delivery schedules that are consistent. There are a number of transportation services available and it has employed most of them. Its purpose in supporting these applications is to obtain single-line service to as many points as possible as a means of obtaining more consistent and faster transportation.

Two of the witnesses from Dallas receive leather and shoe repairing supplies from Chattanooga and one also receives such supplies from Atlanta, Baltimore and Philadelphia.[61] Both support the Bowman application and one also supports the applications of Johnson and Jones although admittedly knowing nothing about them. They now use the joint-line service of Bowman from Chattanooga and for the most part, freight forwarder services from Baltimore. They support the proposed single-line service of Bowman as a means of providing a faster service which will better suit their transportation needs. They receive a total of about 8,000 pounds of freight monthly from these origins.

A wholesaler at Atlanta receives import shoes from New Orleans about once a week, the shipments ranging from 500 to 5,000 pounds, and a manufacturer of children's shoes at Uniontown, Ala., ships about 40,000 pounds per month to Dallas, Fort Worth, Houston and other Texas points.[62] The Atlanta witness now uses the joint-line service of Herrin furnishing third day delivery, and supports Herrin's proposed second day single-line service from New Orleans. He will not use the service of Johnson because of difficulty encountered with one of Johnson's drivers, and he has made no investigation of other services available. Similarly the Uniontown shipper uses the joint-line services of Baggett and supports that carrier's proposed single-line

[61] Witness Nos. 357, 394.

[62] Witness Nos. 5 and 23.

service to certain major cities as a means of obtaining faster transportation service.

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A manufacturer of luggage at Denver ships approximately 250,000 pounds monthly (90 percent by truck) to its Atlanta warehouse; and from Atlanta it ships approximately 850 pounds per month to Birmingham, and about 12,000 pounds monthly to points in Louisiana and Mississippi.[63] It is supporting the Red Ball application. From Denver it is presently using Yellow Transit to Atlanta, via St. Louis. Winter weather conditions sometimes cause delay over this route. From Atlanta it is desirous of having more single-line services to Louisiana and Mississippi points. It is presently using Ryder, Dixie and Deaton. There are numerous other services available both from Denver and from Atlanta some of which the shipper has used and some of which it has not used. The shipper is giving consideration to using the joint-line services of Red Ball from Denver by way of the Dallas gateway.

Household Items—Giftwares

Eighteen witnesses who ship or receive household and giftware items testified in the aggregate on behalf of all of the applicants except Floyd & Beasley and Baggett. Strickland and Jones each called 4 witnesses, Bowman 3, Roadway and Johnson 2 each, and Herrin, Deaton and Red Ball 1 each. Some of the witnesses supported more than one applicant. They all have available to them a number of carrier services which in some instances they are not using or have not tried. Some of these witnesses were not familiar with their transportation services available and some left the routing of their shipments up to their suppliers. They prefer single-line service and in general the witnesses express the view that the proposed schedules of

[63] Witness No. 390.

the carriers they support will provide them with a faster and more satisfactory transportation service than they now have.

Eight of the witnesses ship from Texas points, 4 from Dallas, 3 from Houston and 1 from Marlin (30 miles south of Waco).[64] Their freight to points affected by these applications aggregates about 220,000 pounds monthly. From those points of origin the witnesses have a number of motor carrier services available. Three of these witnesses complain of a lack of any single-line service to Florida points below the northern portion. One supporting the proposed service of three of the applicants to the New England, Middle Atlantic and Southeastern States uses numerous carrier services.

Although he complains in generalities of slow transit time, poor pickup service, damage and slow claim handling by his present carrier services, he leaves the transportation matters up to his traffic department and had no specific information as to the service of any carrier, did not know what carrier services were employed to any particular area, nor what routings were used. Most of his shipments are C.O.D.'s. These eight witnesses complain of slow transit time and prefer single-line service, but they have not tried services which are available to them.

Three witnesses who receive shipments at their respective places of business at Hamburg, Ark., Jackson, Miss., and Tulsa, Okla., also complain of slow transit time and poor tracing service by the carriers they are using.[65] The Hamburg and Jackson witnesses receive their supplies from points in Texas, Alabama, Georgia, the Carolinas and Virginia. They leave the routing up to their suppliers and pay no attention to the route of movement of their shipments. The Jackson witness has many of his ship-

[64] Witness Nos. 266, 322, 380, 413, 463, 486, 490, 500.

[65] Witness Nos. 583, 627, 741.

ments delivered directly to his customers at various points throughout Arkansas, Louisiana and Mississippi. Their support of the Strickland application is based primarily upon that carrier's proposed second day delivery from the Atlanta and Dallas gateways. The Tulsa witness who receives supplies from Miami, Fla., and various points in the southeastern States also has shipments made directly to his customers in Arkansas, Missouri and Oklahoma. It is his opinion that the Jones proposed service out of Atlanta will afford him a much more satisfactory tracing service which is very important to him particularly in connection with those contracts which contain penalty clauses. He is not now using the Jones multiple line service which is available to him from other gateways.

Two witnesses shipping an aggregate of approximately 35,000 pounds monthly of silverware, candles and refined beeswax from Oneida and Syracuse, N. Y., to the Gulf Coast area support the Roadway application for single-line service.[66] They are using various freight forwarder and multiple line services and complain of slow transit time and poor tracing service. They believe that the proposed single-line service of Roadway will meet their transportation needs in the Gulf Coast area by providing faster and more consistent service and better tracing.

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A manufacturer of tubular housewares at Little Rock and one of aluminum and stainless steel cookware at Sheridan, Ark. (30 miles south of Little Rock), support certain of the applicants for service to points in Alabama, Georgia, Florida and the Carolinas.[67] The Little Rock shipper also receives a substantial amount of supplies from that area. They complain of slow transit time by the carriers used and the Little Rock witness

[66] Witness Nos. 303, 335.

[67] Witness Nos. 737, 864.

also complains of poor tracing and claim settlement services. The Sheridan witness uses a local carrier service to originate his shipments and interlines them with a number of carriers at Little Rock. He proposes to continue using the local carrier as the origin carrier for his shipments. The Little Rock witness also has available and uses the services of these several carriers out of Little Rock. If Bowman is authorized to serve Little Rock these witnesses will use that service and in some instances it may result in reducing present multiple line service by one carrier.

Two witnesses testified in support of the applications of Jones and Bowman for service in the transportation of pianos, organs and related items from Fayetteville and Conway, Ark., and Greenwood, Miss., to Birmingham, Atlanta and points beyond (including Savannah), and a third supported the Deaton application for transportation of musical instruments from Atlanta to Baton Rouge.[68] The latter witness has only one small shipment per month and uses either Deaton or Dixie as originating carrier. She has not been solicited by other carriers and for that reason has not tried any of the other services which are available. A substantial volume of the freight moves from Fayetteville, Conway and Greenwood. Both Campbell Sixty-Six and Jones have given the shipper good service and these carriers in conjunction with Bowman are now authorized to serve the area in question. There are other services also available, some of which are being used. Both Jones and Bowman have assured the shipper that they will use power lift equipment as a protective measure for delivery of the freight to the consignees' places of business.

Connecting Common Carriers

Twelve witnesses for motor common carriers testified in support of certain of the applicants.[69] Jones called 4, Johnson 3,

[68] Witness Nos. 155, 177, 212.

[69] Witness Nos. 27, 65, 85, 112, 173, 695, 706, 729, 781, 877, 933, 369.

Floyd & Beasley and Bowman 2 each, and Strickland 1. The testimony of three of the witnesses merely shows a willingness to enter into joint through

rates with the applicants covering their proposed new territory. Another is of the opinion that the proposed schedules of one of the applicants will afford a more consistent interline service than he has. One witness supporting three of the applicants is desirous of reducing 3-line service to the Southwest to 2-line. The applicants he supports have rate concurrences with him and they also are authorized to serve directly the origin points for the freight involved. Other of the witnesses complain that some of the motor carriers, including both applicants and protestants, refuse to enter into concurrences with them for freight which such carriers are authorized to handle directly.

One witness, who is satisfied with his existing connecting carriers, receives approximately 2 million pounds of truckload freight monthly in a trailer interline service from one of the applicants. He supports that applicant for the extended southwestern territory as a means of generating freight for the returning equipment. Another supports one of the applicants for the purpose of establishing a flat-bed trailer interline service for freight moving through Kansas City to or from Atlanta and Birmingham. He has not attempted to establish that type of service with any of the existing carriers during the past three years, but was unsuccessful in prior attempts. Consequently, he has not developed any traffic for that area.

The most significant of this group of witnesses was one supporting the Bowman application for an interline service at Little Rock. School and institutional furniture constitutes a very important portion of his freight and he has experienced difficulty interlining that type of freight. Some carriers refuse to accept it at all, some will accept it only to destinations on their own

lines, and some have restrictions against handling freight on a through rate basis involving more than a 2-line haul. As a result this motor carrier witness has found it difficult to handle this freight, and most especially when destined to Florida points. Bowman's proposed service will afford a connection to relieve the difficulty and provide a necessary transportation connection.

Air Conditioning and Heating Equipment and Supplies

Twenty-eight witnesses having occasion to ship or receive commodities in this category support one or more of the several applications. Collectively, they support eight of the applicants, but most of the support is for Bowman, Johnson, Jones, and Strickland.

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Twenty of the shippers in this category[70] have occasion to move their products between points in Texas (principally Dallas and Houston) and points in the southeastern States (principally Jackson and Greenville, Miss., Birmingham, Decatur, Montgomery, and Mobile, Ala., Miami, St. Petersburg, and Tampa, Fla., and Atlanta and Columbus, Ga.). One or two have occasion to move their products to and from isolated points such as Alcoa, Tenn., Staunton, Va., Baltimore, Md., and Washington, D. C., but the requirements in these respects are comparatively insignificant insofar as the issues in this proceeding are concerned, not only from the standpoint of volume of traffic involved, but also because service at the points indicated would be accomplished under the several proposals here considered only by the interchange of traffic at points within the Southeast, such as Birmingham or Atlanta. The same thing is true with respect to the few shippers who desire service to and from points in Texas beyond the Dallas and Houston areas and whose traffic is now moving through either Dallas or Houston.

[70] Witness Nos. 117, 120, 238, 279, 283, 293, 296, 307, 315, 336, 400, 456, 459, 475, 521, 598, 626, 691, 763, and 853.

Of the 20 shippers desiring service to and from points in Texas, 10 are domiciled in the Dallas area; 5 at points in Texas other than Dallas (of which one is at Houston), 2 are located at Jackson, and 1 each at Birmingham, Decatur, and Miami. All of these shippers are interested in the movement of traffic in less than truckload quantities. Collectively, they are utilizing many of the motor carrier services now available to them, both single-line and connecting line, but in no instance is any shipper now utilizing all of the service available nor has any made a real effort to find out whether the use of certain untried services might be more advantageous than those now used. Their support of one or more of the instant applications is based more upon the desirability of having carriers now utilized extend their service rather than upon any real need for additional service. The principal complaints registered by these shippers center upon a desire for more prompt pickups of their shipments and faster overall delivery times, and they have been led to believe that an increase in the number of services available will solve the former problem and the extension of the various services proposed will help solve the overall delivery time problem by a reduction in the number of carriers participating in the through movements.

There is little evidence supporting these shippers' complaints concerning tardiness on the part of existing carriers in making pickups and there is very little probative evidence on the excessive transit times said to have been experienced, leaving considerable doubt as to the frequency of "poor service" experiences. Of the 20 shippers in this group, evidence of specific transit time heretofore experienced was submitted on behalf of only four. One of these which receives about 10 small shipments a month from Dallas and Houston to Jackson, is shown as consistently receiving two- and three-day service. Another shows rather consistent two-day service from Jackson to Dallas. A Dallas receiver is shown to be receiving consistent two-day

service out of Jackson and two- and three-day service out of Birmingham. A Jackson shipper, which has occasion to receive less-than-truckload shipments from Dallas and Atlanta, shows transit times of two to six days out of Dallas, including intervening weekends in each instance, except for the two-day delivery, and from two to five days out of Atlanta, including intervening weekends on all shipments over three days. This shipper received two-day and three-day service from Red Ball (Dallas to Jackson) the times it used the service, but nevertheless continued to route most of its traffic between these points by Braswell, in spite of the claimed "poor service" shown to have been received from the latter. Jackson is about 400 miles from Atlanta and over 400 miles from Dallas. Birmingham is 660 miles from Dallas and Atlanta is over 800 miles from Dallas. In these circumstances and in consideration of the time-consuming collection, consolidation, break-bulk, and distribution necessary to the efficient handling of less-than-truckload traffic, it must be concluded that to the extent documented herein the service received by the supporting shippers is not shown to be unreasonable, certainly cannot be classified as poor or slow, and possibly provides some explanation for the fact that the supporting shippers, although expressing some dissatisfaction with existing service, have not made any serious attempt to obtain better service elsewhere.

A shipper domiciles at West Hartford, Conn.,[71] which now utilizes the services of Johnson and Roadway on movements into the South and Southeast, supports both such applicants for an extension of their services in order that it might have two single-line services available to points to which it now has none or only one. It now has Johnson's single-line service to Pensacola, Fla.,

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[71] Witness Nos. 94 and 892.

New Orleans, and Mobile and wants an extension of such service to Jackson, Miss., Baton Rouge, Shreveport, and Monroe, La. In addition, it wants the single-line service of Roadway to all of such points which it is here seeking to serve in order that it may have an "auxiliary" service available, notwithstanding that it only ships about 20,000 pounds of freight a month to such points and that most of this moves to Baton Rouge.

A shipper at Greenville, Ala.,[72] which is about 45 miles south of Montgomery, ships to points in New York and New England and desires the proposed single-line service of Roadway for accomplishing these movements rather than the existing connecting line services now utilized, which require an interchange at Montgomery, Birmingham, or Atlanta. It ships in both truckload and less-than-truckload quantities. It has at least four carriers serving its plant directly, but has never attempted to route its shipments beyond the interchange points via Roadway. No serious complaint is made on transit time now experienced in connection with interline movements.

A shipper at Fayetteville, Ark.,[73] ships in less-than-truckload quantities to Atlanta, Charlotte, N. C., Spartanburg, S. C., Decatur, Ala., and Tampa and Fort Lauderdale, Fla. It uses Jones as the originating carrier on most of its shipments into the Southeast and supports Jones' proposed extension to Atlanta and Birmingham in the interest of obtaining better transit time. In spite of its complaint on the transit time now experienced it has made no use of other combination services available to it and there is little or no indication that the mere change in the Jones interline points will result in service materially better than that now available. A Richmond, Va., shipper[74] making truckload and less-than-truckload shipments to points in

[72] Witness No. 140.

[73] Witness No. 818.

[74] Witness No. 888.

Louisiana, Mississippi, and Texas, utilizes the services of Bowman and its connections. It here supports the Bowman application for single-line service into the named States. It now has single-line service into such States which it has not used.

A shipper at Clarksville, Tenn.,[75] has occasion to move truckload and less-than-truckload traffic to such Gulf Coast points as Pensacola, Mobile, New Orleans,

Baton Rouge, and Lake Charles. Its traffic is now all originated by Marvin Hayes Truck Line and interchanged with other carriers at Nashville. It desires the proposed service of Roadway only in connection with the movement from Nashville to destination, but it now has available to it a number of other connecting line services which it has not used to any appreciable extent.

A shipper at Greenville, Miss., supports the Jones and Bowman applications for single-line service between Greenville, on the one hand, and, on the other, Atlanta and Birmingham, and a Jackson, Miss., shipper supports the Strickland application for service from Atlanta, Birmingham, and unspecified points on the East Coast (through Atlanta) to Jackson and Greenville.[76] Both ship in less-than-truckload quantities and both utilize the services of several carriers for movements between the points involved. Both complain of poor transit time experience and both submitted supporting data in respect thereof. That submitted by the Greenville shipper shows transit times on only seven shipments from Atlanta and Birmingham to Greenville. Transit time is shown as ranging from one to three days (except for a single shipment which took 13 days). The Jackson shipper is primarily concerned about transit time

[75] Witness No. 179.

[76] Witness Nos. 590, 625.

from Atlanta to Jackson. Although it makes between 10 and 15 shipments a month, it lists only 17 shipments on its study. These show transit times ranging from two to six days, but 13 of these shipments involve movements over intervening weekends. It is about 400 miles from Atlanta to Jackson; the shippers desire overnight service.

From the above, we are of the opinion that the 28 witnesses supporting the eight applicants noted have failed to establish any real and substantial need for the additional motor facilities proposed but have merely indicated a willingness or desire to have such additional facilities available. Their complaints against transit times heretofore experienced for the most part are vague and nonspecific and are otherwise of little help in determining the adequacy of existing facilities because they generally have made no attempt to utilize much of the service shown to be available. Even in those instances where proof of transit time is furnished, the number of instances of services classified as "poor" or "unsatisfactory" bears little relationship to the number of shipments made and in any event do not warrant a conclusion that the overall service received has been

unreasonably slow from the standpoint of transit time. Most of these shippers appear to have been promised service of a type which it would be extremely difficult for the respective applicants to provide on a regular basis and this is particularly true to the extent that most of the traffic involved moves in comparatively small lots with a considerable amount of intermediate handling probably necessary. A few shippers complain of their inability to obtain open-top equipment with the dispatch required, but the testimony on this subject is too vague and lacking in specifics to warrant any conclusion thereon. It is noted that one shipper which stresses this phase of the mat-

ter proposes to utilize the expanded services of the carriers now utilized, which would not appear to have an effect whatever on the availability of open-top equipment.

Glass Containers

Representatives of seven shippers,[77] having occasion to move glass containers and related items, submitted testimony concerning the transportation requirements of their principals. Two support the application of Bowman, 2 support Red Ball and the remaining 3 support Deaton, Herrin, and Strickland, respectively.

A glass manufacturer at Atlanta, Ga. (Forest Park), has occasion to move bottles from Atlanta to a customer at Houston, and at the time of the hearing herein, was contemplating a movement to a new customer at Baton Rouge. Its traffic, in unspecified volume, all moves in truckload quantities and it desires that Deaton be authorized to extend its lines so as to be in a position to handle its present and future requirements for deliveries at Houston and Baton Rouge. Present requirements for delivery at Houston are being handled by Deaton and Missouri Pacific Truck Lines with interchange at New Orleans and it is proposed that the expected movement to Baton Rouge would be handled by Deaton and Poplarville Truck Line, with the interchange at Poplarville, Miss. The supporting witness voiced no complaint concerning services now received from Atlanta to Houston and has not attempted to utilize the several single-line services now available to it for such movement.

The same manufacturer also supports Red Ball with respect to movements from a plant at Palestine, Tex., to Atlanta, Birmingham, and Greenville, Miss. Its traffic

[77] Witness Nos. 11, 174, 440, 488, 587, 624, 751.

out of Palestine moves in truckloads and in private carriage whenever sufficient equipment is available. Where common carrier service is used, the company has been turning its traffic over to Red Ball with ultimate delivery being accomplished by Ryder and Dixie. Although few, if any, complaints have been received in connection with the services now used, the company prefers single-line service and is supporting the Red Ball application for that reason.

A soft drink producing company at Houston desires the proposed service of Herrin for the movement of flavoring compounds and syrups, labels, and advertising matter from Columbus, Ga., to Houston. It now uses the services of Jack Cole and Herrin in interline service over New Orleans and desires that Herrin be authorized to handle the entire movement. Shipments to Houston range from 200 to 8,500 pounds and are made weekly. No attempt has been made to investigate other services now available to it for the movement of its traffic from Columbus to Houston.

A glassware manufacturer at Chattanooga, Tenn., supports Bowman for service in the transportation of bottles, glassware, and wooden bottle cases from Chattanooga to points in Mississippi, Louisiana, and Missouri. All of its traffic moves in truckload lots and a substantial amount moves in private carriage. The use of private carriage is dictated by company economics, customer delivery deadlines, and customer insistence. Although there is an indication that Bowman's proposed service might divert some traffic now moving in private carriage, it is clear that some of the company's customers do not care to have their shipments delivered by common carrier (some at least for economic reasons). During the first six months of 1966, the company made no shipments by common carriers to points in Louisiana, but made 71 shipments to points in that State in private carriage because of customer insistence. During the same period it made seven shipments to points in Mis-

sissippi in common carrier service and 63 shipments in private carriage; and to Missouri it made 34 shipments by common carrier and 29 in private carriage. Most of the traffic handled by common carriers was in 2-line service utilizing the facilities of Central Motor Service lines, T.I.M.E., Super Service, and ET&WNC and their connections. The company supports Bowman to points which the latter proposes to serve in single-line service. Its representative is not aware of several single-line services now available to it.

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A soft drink bottling company at Jackson, Miss., supports the application of Strickland for expedited deliveries from Dallas and Atlanta to Jackson. It receives less-than-truckload shipments of bottles, crowns, wooden cases, and vending machines from various sources and deliveries at Jackson have heretofore been accomplished by West, Campbell Sixty-Six, Ryder, and Deaton. It is not satisfied with the transit time received on shipments from Dallas, Atlanta, and points beyond and seeks the overnight service promised by Strickland. At the time of the hearing, the routing of the company's traffic was being accomplished by the several suppliers. The volume of traffic received from Dallas is questionable.

Another bottling company at Baton Rouge supports Red Ball for service in the movement of less-than-truckload shipments of bottle caps out of Birmingham. It has used the services of other carriers, including Campbell Sixty-Six, Ryder, and Dixie/Red Ball, and although no complaint is registered against any of the existing services, it desires that the proposed service of Red Ball be made available on a single-line basis.

A producer of soft drinks and soft drink supplies at Camden, Ark., ships beverage concentrates and dry chemicals to bottling plants in the southeastern States and in the Middle Atlantic States as far north as New York. It makes 20 to 25

outbound shipments a month and such shipments average about 400 pounds each. It also has occasion to receive such items as juices, concentrates, and other materials from points in the destination territory indicated, particularly from New York City and points in Florida. The company now utilizes the services of Southwestern on all traffic originated at Camden and Southwestern has been interchanging with a number of other carriers for ultimate delivery in connecting-line service, which has on occasion involved a three-carrier participation. Complaint is made concerning transit time heretofore experienced and it desires the proposed single-line service of Bowman to improve its overall situation. Bowman is now authorized to serve a substantial number of destination points to which the company now makes deliveries, but apparently no deliveries have been routed over the existing lines of Bowman in conjunction with Southwestern.

Three of the shippers in this category ship in truckload quantities and the other four primarily in less-than-truckloads. Two of the truckload shippers operate substantial fleets of their own equipment in private carriage and will probably continue to use their

own vehicles whenever advantageous to them. Two of the supporting shippers have no complaints against existing service and seek the additional services here proposed primarily as a matter of preference for a particular carrier. Certain ones, although complaining of the transit time experienced by presently used connecting-line services, have made no real investigation as to other services available to them, both single and connecting-line. All things considered, there is very little, if any, probative evidence that the shippers in this category have any real and substantial need for the additional motor services which they support.

Vending Machines and Supplies

Nine witnesses shipping vending machines and supplies testified on behalf of five of the applicants. Bowman called 5 and 1 each was called by Jones, Johnson, Strickland, and Herrin. The Jones witness also supported Johnson and Bowman. The Johnson witness also supported Bowman, and a Bowman witness supported Johnson.

A shipper of vending machine items at Atlanta[78] has about 1,000 shipments weekly, averaging 500 pounds each, to various points in Louisiana, Mississippi, Arkansas, Missouri, Kansas, Illinois, and Oklahoma. It uses the services of Johnson, Bowman, Jones, Ryder, ETMF, and others. It operates 40 tractors and 80 trailers in private carriage, moving about 75 percent of the traffic to Memphis and Louisville from where it uses single-line service to finish the movement. It prefers single-line service over joint-line service because of damage in interchange. It desires a faster service because some items have a shelf life of only 30 days after manufacture.

Two witnesses testified for a shipper[79] with plants at Whippany, South Kearney, and Dover, N. J., from which less-than-truckload shipments are made to Dallas, Houston, and Baton Rouge. It uses such carriers as Johnson, Strickland, Super Service, T.I.M.E., Navajo, Transcon, Consolidated and Roadway. A traffic study was submitted showing for the most part, poor transit time. There is much service available, however, some of it single line, which has not been tried. Johnson has been used on only a few shipments to Baton Rouge because the shipper prefers carriers who can be contacted at Chicago where

[78] Witness No. 171.

[79] Witness Nos. 332 and 507.

the home office is located. Roadway, Johnson and Bowman presently serve all three origin points.

A shipper[80] at Scottsboro, Ala., ships approximately 3 million pounds to points throughout the United States, but is interested here primarily in Texas, Louisiana, and Arkansas. It is served by Bee Line and Ryder, using the latter over the Memphis and Atlanta gateways and the former over the Birmingham and Chattanooga gateways, with their various connections. It complains of 3-line service but was not aware of the present single-line service of Ryder and Roadway to some Texas points, as well as 2-line service of ETMF or Mercury Freight by interchange at Birmingham.

A receiver of vending machine supplies at Lake Charles, La.,[81] receives about two shipments a month, weighing from 150 to 500 pounds each, from Atlanta, Birmingham, or Montgomery. It does not select the origin carrier but some of the deliveries have been made by Herrin and this has been satisfactory. A consistent direct service is desired but it has not made much of an effort to find and use present available service.

A shipper at Kansas City, Mo., and a receiver at Pensacola, Fla., move over 1.5 million pounds of traffic in less-than-truckload quantities from Kansas City to points in Florida.[82] The freight is presently being interchanged at Birmingham, Atlanta, and some at St. Louis. Present carriers are Gordons, Campbell Sixty-Six, Roadway, Watson-Wilson, and T.I.M.E. to Birmingham and Atlanta with Toedebusch in conjunction with Ryder being used over the St. Louis gateway. A direct single-line service is desired in order to obtain faster service and eliminate interchange difficulties. There is other motor carrier service available that has not been used.

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[80] Witness No. 344.

[81] Witness No. 646.

[82] Witness Nos. 688 and 698.

A manufacturer at Conway, Ark.,[83] ships 40,000-50,000 pounds a month in less-than-truckload quantities to points in Alabama, Florida, Georgia, Maryland, the Carolinas, New Jersey, Tennessee and Virginia. It presently uses Holt Truck Lines as origin carrier to Little Rock for connections there with ET&WNC, Strickland, T.I.M.E., Gordons, Red Ball, and ABF. It desires 2-line service for faster delivery but insists on using Holt as the origin carrier. It has only occasionally used Bowman over the Memphis gateway for the 2-line service available to the Carolinas, Georgia, Tennessee, Florida and certain other areas.

A shipper at Chattanooga[84] ships annually 500,000 pounds into east Texas, 482,000 pounds into Arkansas, 280,000 pounds into Louisiana, and 632,000 pounds in Mississippi. Bowman and Robinson are predominantly origin carriers at Chattanooga and the delivery carriers are Red Ball, Central, ABF, and ETMF. It discontinued the use of Ryder about three years ago because of delay and tracing problems and Roadway because of an imbalance of equipment in Chattanooga. It prefers single-line over joint-line service but has had very little dissatisfaction with the present service.

Some of the shippers have not made any real effort to determine what motor carrier service is actually available to them at the present time. Some are using preferred carriers when a better service could be used. A reasonably adequate service is presently being provided.

Industrial Supplies, Equipment and Hardware

Thirty-six witnesses who ship or receive various industrial supplies, equipment and hardware testified in the aggregate on

[83] Witness No. 813.

[84] Witness No. 816.

behalf of all of the applicants Bowman called 8 witnesses, Red Ball and Jones called 7 each, Strickland 4, Johnson, Herrin, Roadway and Deaton 2 each, Floyd & Beasley and Baggett 1 each. Some of the witnesses testified on behalf of more than one applicant. The commodities involve such items as saws, power tools, stapling machines, lawn mowers, general hardware, industrial brushes and mill supplies, welding equipment, bottle carrying cases, pallets, moldings, car washing equipment and others.

Eleven of these witnesses support certain of the applicants for service primarily from Atlanta, Ga., to one or more points in Louisiana, Arkansas, Mississippi and Texas; and three others support service from Chattanooga, Tenn., or Augusta, Ga., to one or more points in those four States.[85] Their testimony relates to approximately 300,000 pounds of freight monthly moving in that area. In addition to Atlanta five of these witnesses also ship or receive freight from one or more of the following points for which they support their respective applicants: Hartsville, S. C., Birmingham and

Huntsville, Ala., Dallas and Houston. All of these witnesses are served by a number of motor carriers. Several complain of slow transit time or poor pickup service from the carriers being used, but some so complaining are not using nor have they investigated the other services available to them. One at times experiences difficulty in obtaining equipment for truckload shipments. Two expressed a preference for single-line service although one of these is not using the single-line service now available to him; and three support the schedules of service as proposed by certain of the applicants. Two of these witnesses

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[85] Witness Nos. 45, 63, 96, 126, 183, 136, 138, 375, 395, 408, 585, 628, 826 and 901.

supporting certain of the applicants for single-line service have not tried the joint-line service now available by the applicants they support.

Five of the witnesses ship an estimated total of 150,000 pounds of freight per month from either Greenville, Indianola, Greenwood, or Meridian, Miss., three shipping to Atlanta, Birmingham or points beyond, one to Hamburg, Ark., and the other to points in Georgia, the Carolinas and Virginia.[86] From Greenville and Greenwood to Atlanta, Birmingham and points beyond these witnesses use the services of Gordons, Campbell Sixty-Six, Roadway, ET&WNC, and to a lesser extent Deaton and Viking; from Indianola Gordons is used to Atlanta and Campbell Sixty-Six to Birmingham; and from Meridian to Georgia, the Carolinas and Virginia points the services of Ryder, Campbell Sixty-Six, Dixie and West with their connections are used primarily. Two of the witnesses wish to avoid having their traffic routed through Memphis which they view as causing delays because of traffic congestion. Two others want more single-line service as a means of improving transit time. One witness leaves the routing of his freight up to the shipper, but favors the schedules of the carrier he is supporting. These witnesses have a substantial amount of carrier service available, even though located in relatively small communities.

Nine witnesses testified as to their need for service to or from Alabama points, primarily Birmingham, Tuscaloosa, Pelham and Brewton.[87] One of the witnesses who testified on three different occasions supporting a

total of five applicants, has facilities located at various points in Alabama, Georgia, Florida and Tennessee. Besides the large

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[86] Witness Nos. 10, 204, 411, 633 and 930.

[87] Witness Nos. (52, 653, 884—same witness), 182, 193, 282, 650, 804, 839.

volume of freight he receives at his main facilities at Pelham and Birmingham from suppliers located throughout the country, he also has freight moving between his various facilities as well as from the suppliers directly to those facilities. There are over 1 million pounds of freight per month involved in his particular operation, a portion of which is handled in his private carrier operation of some 134 units of equipment. The witness uses many different carrier services which are available. His support of the five applicants is with a view to obtaining as much single-line service as he can which he believes will result in a more consistent service and one which will enable not only faster transit time but also a closer control and more efficient use of his computerized material inventory.

The testimony of the other witnesses of this group of nine relates to approximately 475,000 pounds of freight monthly. Two of them supporting service at Pelham and Brewton and a third, who ships over 400,000 pounds of pallets monthly from Tuscaloosa to Houston, primarily by rail, are interested in obtaining single-line services to avoid delays and shortages which they attribute to use of joint-line service. One has available the single-line service of one of the applicants who has solicited his business, but is not using it. Another of the witnesses has no complaint about the service he is receiving between Birmingham and Baton Rouge, Beaumont and Houston but is interested in having available as much carrier service as possible. Two witnesses complain of slow transit time and inconsistent service. One of these is using the service of three carriers and has other carrier services available, both single-line and joint-line. The other has only four shipping doors and will accept delivery of freight only in the morning, reserving the afternoon for shipping. He prefers to receive his freight from carriers he uses on his outbound shipments, including the applicant he supports. He also has available several single-line inbound services which he is not using, as well as a number of joint-line services.

Three witnesses shipping such items as handles for tools, aircraft hardware, and industrial brushes, support service from Dallas and Clarksville, Tex., and Hope, Ark., to points in Mississippi and to Atlanta, Birmingham and points beyond, and from Dallas to points in Florida, Georgia, New Jersey and New York.[88] Their testimony

relates to approximately 40,000 pounds of freight per month. Two of these use Strickland as their primary origin carrier because of its satisfactory pickup service, but complain of slow transit time to Florida and other southeastern points. They have no information concerning the connecting carrier services used nor the availability of other services. The Clarksville shipper uses Red Ball as origin carrier with ETMF as connecting carrier to Atlanta and Birmingham, and other carriers to Greenville. He has no complaint as to the Greenville service but states that occasionally deliveries to Atlanta and Birmingham are slow. He prefers single-line service for ease in tracing and to avoid interline delays.

Two witnesses receive freight at Dallas from the Southeast, Middle Atlantic and New England areas, and another ships from Greensboro, N. C., to points in Texas, Louisiana, Arkansas, Mississippi, Kansas and Missouri.[89] It is estimated that their testimony relates to over 125,000 pounds of freight per month. The two Dallas witnesses use a variety of transportation services including freight forwarders, Sea-Land service and various motor carriers. Although they complain of slow transit time they did not comment upon the other transportation services available to them nor indicate what steps, if any, they have taken to improve the service they receive. The Greensboro

[88] Witness Nos. 382, 465 and 685.

[89] Witness Nos. 368, 444 and 548.

shipper's production is booked ahead for approximately a year and he is interested in having as much single-line fast transportation service available as possible for his customers. He uses Roadway, Akers, RC and to a limited extent the applicants he supports namely, Bowman and Johnson. He considers some of his products not to be readily adaptable to interline service and for that reason prefers single-line service. However, at times he uses joint-line service when single line is available.

A witness shipping moldings for rubber stamps and marking devices from Jackson, Miss., to various points in the Southeastern, Middle Atlantic, and New England States, and one shipping car washing and steam cleaning equipment and supplies from Siloam Springs, Ark., to Atlanta, Birmingham, and points beyond, also complain of slow transit time.[90] Each is being served by three carriers at point of origin. These carriers give single-line service to some points and connect with numerous other carriers for points beyond their lines. The Jackson

witness was unaware that Bowman and Johnson as connecting carriers could give a two line service to many of his destinations. The Siloam Springs witness has not tried the joint-line service of Campbell Sixty-Six Bowman to Florida points although he has not been satisfied with present service to that area.

As will be noted these 36 witnesses have a number of transportation services available to them. Their primary complaint against their present service is that it is slow and inconsistent. However, for the most part they have services which they have not tried or are not using.

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[90] Witness Nos. 596, 844.

Toys

Five witnesses who ship toys, bicycles, childrens' vehicles, playground apparatus and gaslight equipment testified in support of seven of the applicants.[91] Bowman called 2 witnesses, and Strickland, Baggett and Johnson 1 each. Some of the witnesses testified on behalf of more than one applicant. Four of the witnesses believe that the proposed single-line services of the applicants they support will eliminate interline delays and improve transit time and tracing services. The fifth has experienced some very poor pickup service by three carriers and two others have refused to make pickups on the basis of insufficient equipment and suggested that he use other carrier services. All however, have a number of carrier services available which for the most part seem reasonably satisfactory, and some have services available which they have not used.

One of these witnesses shipping by motor common carrier approximately 23,000 pounds of toys monthly from Brent, Ala. (55 miles south of Birmingham), to Texas points has no single-line service. He uses Baggett as his origin carrier and supports that carrier's proposed single-line service as a means of obtaining better transit time on his shipments and a more satisfactory tracing service. Another shipping approximately 45,000 pounds of bicycles monthly from Little Rock to points in Alabama, Georgia, Florida, South Carolina and North Carolina, has at least five single-line carrier services available to Atlanta or Birmingham. He supports the Bowman and Jones applications for their proposed single-line service but has not tried their joint-line service over the Memphis gateway.

A witness shipping approximately one-half million pounds monthly from Bossier City, La. (across the river from Shreve-

[91] Witness Nos. 162, 328, 352, 666, 866.

port), to Jackson, Miss., Birmingham, Atlanta, Richmond, Washington, Baltimore, Wilmington and east Pennsylvania points testified on two different occasions supporting a total of five of the applicants. He has many joint-line services available which he is using and a substantial number which he has not tried over various gateways. He too prefers single-line service to eliminate interline delays and also wants available additional carrier services to avoid possible equipment shortages during rush periods.

The other witness who ships an average of about 85,000 pounds of toys monthly from Elizabeth and Plainfield, N. J., to Texas, Arkansas, Louisiana, and Mississippi points (75 percent to Texas) is using Bowman and Johnson as his principal origin carriers. He supports them for their proposed single-line service to these States. Two carriers authorized to perform single-line service to Texas points (Roadway and T.I.M.E.) have refused to pick up his freight claiming insufficient equipment and suggesting that he use other carriers. Three others authorized to perform single-line service to some points have given such poor pickup service that the shipper has discontinued using them. He is using also the service of Harris/Ryder and of Transcon although on one occasion the latter held a shipment on its platform for a week awaiting available equipment to forward it on to destination. Other carrier services also are available, some of which he is using to certain areas but has not used them in joint-line service to the southwestern States.

Rubber and Rubber Products

Twenty witnesses who ship or receive rubber products testified on behalf of all of the applicants except Deaton and Floyd & Beasley. Roadway called 6 witnesses, Bowman 4, Herrin 3, Red Ball and Johnson 2 each, and Strickland, Baggett and Jones 1 each. Some of the witnesses testified on behalf of more than one applicant.

Five of these witnesses ship or receive tires.[92] One ships approximately one-half million pounds per month by truck from Tuscaloosa, Ala., to Houston, Dallas and Fort Worth (the major portion in truckload lots) and about 1.5 million pounds per month from Tuscaloosa to Atlanta and points beyond. About half of the latter

amount is destined to consignees in the Atlanta metropolitan area. He uses the single-line service of Alabama Highway Express or Dixie to Atlanta and the joint-line service of Campbell Sixty-Six and some five connecting lines to the Texas points over the Memphis gateway. He complains that he has no single-line service from Tuscaloosa to Dallas, and further that he desires more service to Atlanta. There are numerous joint-line services available which he has not tried.

Another of the major tire shippers has plants at Gadsden, Ala., and Topeka, Kans., a warehouse at Kansas City, and three fabric mills at Rockmart, Cedartown, and Cartersville, Ga. Truck shipments from Gadsden to Topeka amount to approximately 875,000 pounds per month, to Kansas City 100,000 pounds per month, to New Orleans about 300,000 pounds per month, and from Topeka to Gadsden about 300,000 pounds per month. From the three fabric plants to Topeka over 1.7 million pounds per month are shipped. Most of the freight moves truckload. Protestant Holloway Motors is dependent upon this traffic for the major portion of its business. The witness acknowledged that he might divert as much as 50 percent of the freight from Holloway although that carrier gives him very good service. In addition, he has available the single-line service of Roadway to the western points, and of Baggett, Ryder, Dixie and Deaton to New Orleans as well as a number of joint-line services. For the most part he has good service although at

[92] Witness Nos. 25, 176, 522, 597, 910.

times some of the carriers handling the New Orleans freight have a freight balance problem.

The other three tire witnesses have an aggregate of about 13,600 pounds of freight monthly moving either from Gadsden or Akron to Morgan City, La., from Houston to Greenville, Miss., and Birmingham, or from Chattanooga to points in Mississippi, Louisiana, Arkansas, Texas and Missouri. They seek improvement in transit time for their freight, and the Houston witness also supports the proposed direct single-line service from Houston to Greenville. All have the service of a number of carriers available.

Three of the witnesses ship or receive recapping rubber and related materials aggregating about 45,000 pounds per month.[93] One shipping from Dallas to the southeastern and Middle Atlantic States uses the services of Mercury Freight, Transcon, Roadway, Gordons, Red Ball and Transamerican. He supports four of the

applicants for additional services which he hopes may result in improving transit time for his shipments. A witness from Tulsa receives his materials from Gadsden using the joint-line service of Bowman/Jones over the Memphis gateway. He supports the Jones application for single-line service. He also has available the single-line service of Transcon and other joint-line services. A San Antonio witness receives materials from Asheville, N. C., and Atlanta and ships outbound to Atlanta, Jackson and points in Florida and the Carolinas. He is served at San Antonio by ETMF, Roadway and Merchants. He complains that some of the connecting lines fail to handle claims satisfactorily.

Three witnesses supporting the Roadway application and one that of Johnson are interested in transportation of synthetic

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[93] Witness Nos. 359, 530, 740.

rubber from Baton Rouge, one to Warren, Ohio (320,000 pounds per month), and the others to points in Ohio, Indiana, Michigan, Pennsylvania, New Jersey, New York and the New England area (over 7.5 million pounds per month).[94] To Warren, Ohio, the joint-line service of Ryder/Roadway over the Birmingham gateway is used. Several other joint-line services are available including Campbell Sixty-Six/Roadway and Red Ball or Herrin and their connections. The witness wants single-line service because on occasion when joint-line carriers may fail to effect a through trailer service it is not unusual for a portion of the product to be contaminated or damaged making it unusable. In addition, the witness has very limited storage space and must depend upon scheduled deliveries of materials to keep production lines in operation. He believes that single-line service is more dependable to meet his needs. The Baton Rouge shippers use rail, barge and various motor carrier services. They have the same need for single-line or at least through trailer service to protect the product.

The Roadway application also was supported by a witness shipping baby feeding equipment and accessories from Ravenna, Ohio to points in Alabama, Louisiana, and Mississippi and by one who ships a wide variety of rubber products from plants and warehouses in Ohio, New York, Pennsylvania, Massachusetts, Connecticut, Kentucky and Indiana to the Gulf Coast area.[95] The former ships approximately 30,000 pounds per month and the latter over a million pounds per month to the areas indicated.

The Ravenna witness' plant is served by Roadway, Morrison, and Youngblood. He has only joint-line service to the Gulf Coast available. The other witness uses the large number of

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[94] Witness Nos. 223, 511, 601, 560.

[95] Witness Nos. 604 and 856.

motor carrier services available from the numerous origins and has single-line service to some points and only joint-line to others. Roadway is used extensively to the points it now serves. Both witnesses want as much single-line service as they can get with a view to improving transit time as well as tracing and claim handling.

Two witnesses testified with respect to their need for service in the transportation of textile and rubber products from North Charleston, S. C., to points in Alabama, Mississippi, Louisiana, Arkansas, Texas and Missouri, and one for service in the transportation of rubber insulating material from Atlanta to points in Louisiana, Arkansas and Texas.[96] The latter is using Johnson or Dixie to New Orleans, ETMF to Texas points, and Gordons to Arkansas. His volume is small. He complains that he has used Ryder but experienced poor pickup service, and that ETMF and its connection lost one of his shipments. He knows of other carrier services which he has not tried. The North Charleston witnesses ship or receive approximately 80,000 pounds of freight per month to or from points in the South and southeastern States named. They use the services of a number of carriers including some single line and some joint line. They complain of slow and inconsistent transit time and occasionally equipment shortages, particularly if flatbed equipment is needed. One of these witnesses expressed the view that the competition of additional carrier services as proposed by three of the applicants may result in improvement of all the services.

Three witnesses are engaged in the manufacture and distribution of a large number of industrial and automotive rubber products.[97] Two represent a company handling over 500 different kinds of engineered rubber and plastic products. They

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[96] Witness Nos. 104, 619, 767.

[97] Witness Nos. 40, 225, 683.

support applications for additional service between plants at Waynesville, N. C., and Springfield, Mo., and between the plants and warehouses at Atlanta, Dallas and Asheville, N. C. The plants receive supplies from numerous southern points and the warehouses serve the States of Alabama, Georgia,

Florida, North Carolina, South Carolina, Tennessee, Arkansas, Louisiana, Texas, New Mexico and parts of Colorado, Kansas and Missouri. Approximately 750,000 pounds of freight per month is involved in this area moving in both rail and truck service. The witnesses use the services of a large number of motor carriers but complain of slow and inconsistent transit time. In some instances they have used the service of one of the applicants as a bridge carrier for a three-line service when two-line service of two of the applicants supported was available. The testimony discloses that the witnesses have a number of services available which have not been tried and which possibly could meet their transportation needs.

The third witness supports service from Denver, Dallas and Natchez to Atlanta, Birmingham and points beyond, and from Atlanta to Birmingham and points beyond. Approximately 300,000 pounds of motor common carrier freight per month is involved. The company which this witness represents also owns a motor common carrier which serves it along with a number of other carriers. It is using some joint-line services even though single-line is available, and there are several joint-line services also available which the witness has not tried.

These 20 witnesses control a very substantial volume of freight and they have a number of carrier services available to them. Their support of the respective applicants for additional service is primarily with the hope of improving the quality of the service by reducing the transit time and simplifying tracing and claim handling and by providing more single-line service.

Office Machines and Supplies

Six of the witnesses ship or receive office or business machines of various types.[98] Two of them ship from Atlanta to customers in Louisiana and Texas and one of these also receives such machines from the customers for repairing or as a return of rented machines. A third witness located at Arlington (Dallas) ships such machines between Arlington, Greenville, Miss., and Atlanta. The freight of these three witnesses aggregates approximately 7,500 pounds per month. One of the Atlanta shippers uses bus or air service predominantly, while the other uses many different motor

carrier services which are available at Atlanta in addition to some bus service. The Arlington witness has limited dock facilities and restricts the carriers used primarily to its regular distribution carriers. He uses ETMF and Gordons on the Atlanta freight and Red Ball's joint-line service on the Greenville shipments, even though there is available a single line to Greenville. He supports the application of one of his regular distribution carriers in order to have additional service available to Greenville and Atlanta. The primary complaint of the Atlanta shippers is that their service is slow. The proposed schedules of the applicants they support appeal to them as affording a means of obtaining a more timely and dependable service at a cost less than the bus or air freight charges.

One witness ships approximately 7,500 pounds of office machines monthly from Searcy, Ark., to Atlanta, Birmingham and points beyond such as Miami, Richmond, Philadelphia and New York City. His plant is served by Powell Truck Lines of Searcy and by Superior Forwarding Company. He uses pre-

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[98] Witness Nos. 55, 95, 129, 343, 381 and 919.

dominantly the service of Powell to Memphis with open routing beyond. His support involves essentially a shift in the point at which Powell will interline the freight from Memphis (approximately 95 miles from Searcy) to Little Rock (approximaetly 50 miles from Searcy).

A witness shipping typewriters and adding machines from Groton and Cortland, N. Y., supports the Roadway application for service to the Gulf Coast area. Roadway does not serve either origin point but would receive shipments through a local carrier at Syracuse. The local carrier now delivers the Gulf Coast freight to freight forwarders. The plant is served also by Associated Transport.

The sixth witness shipping adding and computing machines from Orange, N. J., to Jackson, Miss., and points in Louisiana and Texas supports two of the applicants. He now uses Johnson, Roadway, Mason & Dixon, Jack Cole, Harris and freight forwarders. He complains of slow transit time, late pickup service, and that interline service subjects his freight to pilferage. He is aware of other carrier services available to him including single-line services to Texas points. However, he will not call those carriers for service until they solicit his freight.

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Four of the witnesses ship or receive office furniture and related supplies.[99] Two of them receive a total of some 23,000 pounds of freight monthly at their Lafayette, La., places of business from Atlanta and Birmingham or through those gateways. They use the service of Ryder which they find to be very good from Birmingham but a little slow on freight coming through Atlanta. One witness does not route his freight while the other does, although at times he specifies "best way." They support the Red Ball application because that carrier gives

[99] Witness Nos. 345, 571, 608, 662.

them very satisfactory service in other areas which it serves directly.

One witness located at Dallas receives approximately 1,000 pounds of metal furniture monthly from Atlanta and ships outbound to Jackson. Atlanta and Birmingham approximately an equal amount. His inbound freight is routed ETMF by the shipper. He routes the outbound shipments via the joint-line service of Herrin and its connections because that carrier gives him good pickup service. He is aware of a number of single-line services available but they do not give him a satisfactory pickup. The fourth witness located at Birmingham receives his supplies from Wichita Falls and Carrollton, Tex., and Atlanta, Ga. He depends upon the suppliers to route the freight, and has no knowledge of transportation services available nor whether they have been tried. He considers that the service he is receiving is unsatisfactory in that the transit time is too long.

The testimony of these 10 witnesses shows support of the applications primarily as a matter of shipper convenience or preference and as a possible means of obtaining faster transportation service. They have a number of carrier services available some of which they have not tried.

Grocery Store Items

Twenty witnesses who ship or receive grocery store items testified in the aggregate in support of all of the applicants except Floyd & Beasley, Strickland and Baggett. Some support more than one applicant. Bowman called 6 witnesses, Ball 5, Jones 4, Herrin 3 and Deaton and Johnson each. All of the witnesses have a number of motor carrier services available some of which they have not tried. Some testified with very little knowledge of the existing services, and some expressed merely a desire for single-line service or faster trans-

portation. While they control a large volume of freight, their testimony shows little need for additional service as proposed by applicants.

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Four of the witnesses ship from Atlanta to points in Mississippi, Louisiana and Arkansas, and four located respectively at Indianola, Miss., Alexandria, La., Muskogee, Okla., and Amarillo, Tex., receive supplies from Atlanta.[100] The freight of these eight witnesses exceeds 1.3 million pounds per month. They have some single-line service available and numerous joint-line services out of Atlanta, via gateways at Memphis, Jackson, Birmingham, Mobile, New Orleans and Dallas. Their general complaint is slow transit time. One witness so complaining has never routed any of his freight and has not tried a number of the joint-line services available. Another expressed a desire to have more protective service available for his shipments of beverage syrups when the temperature may be below 20 degrees. Two witnesses handling such items as potato chips, ice cream cones and related items, urge that single-line service is necessary both from the standpoint of rapid transit and to minimize damaging of the products through excessive handling. Another who is not critical of his existing services expects to benefit by the large number of points in Arkansas and Louisiana which the applicant he supports will be authorized to serve from Atlanta if his application is approved.

Two other witnesses shipping tobacco products, one from Richmond and the other from Greensboro and Louisville, destined to distribution points in the Southwest such as Houston, Dallas, Fort Worth, New Orleans, Shreveport, Little Rock and Kansas City, and a third, shipping dog care products from Richmond to southwestern points, support in the aggregate

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[100] Witness Nos. 181, 196, 245, 350, 417, 639, 680 and 831.

three of the applicants.[101] They ship in excess of one million pounds per month to that area. One considers his present joint-line service satisfactory, but prefers single-line. These witnesses use piggyback service for a large portion of their shipments but also need the services of motor carriers. All are served by a large number of motor carriers.

Four of the witnesses support service from their respective producing or origin points to Atlanta, Birmingham and points beyond.[102] Their freight aggregates

about 700,000 pounds monthly. Two of these operate five plants each, located in small communities in northwestern Arkansas and northeastern Oklahoma. They often have truckload shipments made up of freight from two or more of the plants, consolidating the shipments at their respective main plants at Fort Smith and Siloam Springs, Ark. Both operate as private carriers and one also employs both contract and common carrier services. The other uses common carriers incuding a refrgerated carrier service at times when it may be necessary to protect canned goods from freezing. The latter witness complains that refrigerated equipment is not always available when needed, and further that he wants single-line service inasmuch as it is his company's policy not to use joint-line service. Jones serves the various plants and could consolidate the shipments for full loads. There is no indication that either shipper has attempted to utilize that carrier in a trailer interline service.

Of the other two witnesses, one ships sugar from Supreme and coffee from New Orleans and the other ships canned sweet potatoes from St. Francisville (30 miles north of Baton Rouge) and will ship also from a new plant under construction at

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[101] Witness Nos. 326, 869, 928.

[102] Witness Nos. 541, 570, 616, 787.

Valladeau to Atlanta, Birmingham and points beyond. The latter witness has no particular complaint with his existing transportation service but wants additional regular route service available. The other who is served by several motor carriers supports one of the applicants for single-line service which he believes will provide a more consistent and dependable transit time for his freight.

Two witnesses shipping substantial volumes of freight to Mississippi and Louisiana points from their distribution warehouses, one located at Birmingham and the other at Chattanooga, support respectively the Red Ball and Bowman applications.[103] From Chattanooga Bowman is used as origin carrier with open routing beyond. The witness is not dissatisfied with the Bowman joint-line service but believes that its proposed service to Mississippi and Louisiana points will result in shorter transit time for his freight. A number of different carriers are used as origin carriers at Birmingham with Red Ball being used as a delivering carrier. The witness was unaware of a number of single-line services available from Birmingham and had very little specific information concerning the carriers used or the extent to which his company served the area in private carrier operations.

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Two other witnesses support the Herrin application for its proposed single-line service from Houston to Jackson, Miss., and from Memphis to Columbus, Ga.[104] The Houston witness is using the single-line service of Red Ball and has other single-line service available as well as a number of joint-line services which he is not using. The Memphis witness who ships snuff, tobacco and insecticides was not aware of any

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[103] Witness Nos. 340, 675.

[104] Witness Nos. 265, 718.

single-line service to Columbus. He uses several different origin carriers for this service but had no knowledge of the delivering carriers.

A witness supporting the Bowman application for the transportation of canned animal food from its proposed new facilities at Golden Meadow and Lockport, La., to points in Alabama, Georgia and the Carolinas contemplates a production of around 800,000 pounds monthly for this area.[105] That volume will require the services of a number of motor carriers. The shipper has testified previously on behalf of 16 carriers seeking authority to serve the new plants, including several proposing deliveries to this four State area. Three motor carriers already hold authority to serve the Golden Meadow and Lockport facilities including one of the applicants in this proceeding.

Photographic Equipment

Three shippers of cameras, projectors, films, chemicals, and related items testified in support of Herrin, Bowman, Johnson, and Red Ball. Two of the witnesses[106] ship in less-than-truckload quantities from Atlanta to New Orleans, Baton Rouge, Birmingham, Memphis, and points in Mississippi. Approximately 2.5 million pounds of freight moves each year. The single-line service of Dixie, Ryder, Johnson and Southern Railroad is used, as well as the joint-line service of GFA/West and GFA/Red Ball. Ryder is used to Birmingham, ETMF to Memphis and Deaton, Dixie and Johnson to some Mississippi points. There is no difficulty on the traffic to Birmingham or Memphis. To other points there is some complaint about the transit time and service not being dependable. There

[105] Witness No. 927.

[106] Witness Nos. 9 and 33.

was no recollection of any particular claims on shipments to points in Mississippi.

A shipper[107] at Dallas supports Herrin and ships from Dallas to Montgomery, Mobile, Birmingham, Atlanta, and Jackson, Miss. About 200 pounds move weekly over

the single-line service of Red Ball to Mobile and Herrin is used on shipments to Montgomery, Birmingham, and Atlanta, with point of interchange unknown. Single-line service is desired to all points, but there is considerable motor carrier service presently available, some of which has not been used.

Petroleum Products, Supplies, Equipment

Seventeen witnesses who ship or receive petroleum products, supplies, equipment and related items, testified, in the aggregate, in support of all of the applicants except Floyd & Beasley. Some support more than one applicant. Strickland called 4 of these witnesses, Bowman 3, Herrin, Red Ball, Baggett and Johnson 2 each, and Roadway and Jones 1 each.

Nine of these witnesses handle packaged petroleum products and allied items aggregating approximately 4.75 million pounds per month.[108] One shipping from El Dorado, Ark., to Greenville, Miss., Atlanta and Birmingham and points beyond is using his own vehicles for shipments going to Mississippi which total about 400,000 pounds per month. This private carrier operation was begun in January 1966 following advice by protestant ABF that it preferred not to handle its freight to Greenville (which is located about 113 miles east of El Dorado). The other common carrier services available from

[107] Witness No. 409.

[108] Witness Nos. 75, 115, 230, 314, 546, 556, 577, 793, 836.

El Dorado to Greenville require operation through Memphis. a distance of approximately 400 miles.

Another witness shipping from Fort Worth to the Southeastern, Middle Atlantic and Northeastern areas also uses private carrier operation for his truckload shipments to the Southeast, but supports additional common carrier service for his less-than-truckload shipments. He complains that existing services, which include some of the applicants as well as protestants, are slow and that tracing and pickup services are unsatisfactory. This witness is served by a number of carriers furnishing single-line service to some points and joint-line services to the others.

A witness served by a number of motor carriers is supporting Baggett for its proposed single-line service from Port Arthur, Tex., to the territory in Alabama and Georgia which that carrier is authorized to serve. He complains that some of the carriers authorized to serve Port Arthur do not make pickups there. Baggett is now used as origin carrier for the return of shipping containers and certain supplies.

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One witness who ships over 2.2 million pounds of petroleum products in containers per month from Smiths Bluff, Tex. (5 miles south of Beaumont), to points in Alabama, Florida and Tennessee is supporting four of the applicants in an effort to have available single-line service to as many points as possible. He has no problem with his existing single-line service on full trailerloads destined to one point, but has some difficulties in aligning shipments where multiple stopoffs are involved, and in obtaining service for the return of empty drums. His stopoff shipments constitute about 50 percent of all shipments and generally have two stops in addition to final delivery. This witness now has available and is using a number of single-line services for many points, including stopoff shipments, and his company

is the larges: shipper in the Beaumont area of one of the protestants.

Another shipper of over 1 million pounds monthly of packaged petroleum products from Kansas City, Kans., to points in the Carolinas, Georgia and Florida supports the Bowman application for its wide territorial coverage in the destination States. It is his opinion that split deliveries can be better aligned with that type of service available. This shipper now has single-line service to many of the points in these four States and can use the service of Bowman and many other carriers as connecting carriers within that area.

A witness who ships monthly about 443,000 pounds of packaged petroleum products and filling station items from Baytown, Tex., Baton Rouge and New Orleans to points in Georgia, Florida and South Carolina, and from Charlotte, N. C., to points in Arkansas and Louisiana, supports three of the applicants. He complains of instances of slow transit time and some inconsistency of service from the numerous carrier services he employs. While he has a large volume of freight moving he has not made a real study of the services available to him and was unaware of some services available including some single-line service. From Baytown he prefers to have one carrier make all pickups and distribute the freight to the various line-haul carriers, although if the line-haul carrier insists, he is permitted to make the pickup directly.

A shipper of synthetic petroleum and resins in drums and bags from Handsboro, Miss., supports the Roadway application as a means of obtaining a single-line service to various Ohio points and additional service to Pennsylvania, New Jersey, North Carolina and Georgia points. The bags are susceptible to damage from excessive handling. The shipper uses the single-line service of Johnson to many of the eastern points

and has single-line service to other areas. The proposed Roadway service at Handsboro will afford the shipper single-line service for a large portion of the points to which his shipments are destined.

Eight of this group of 17 witnesses ship or receive oilfield equipment, supplies and related items.[109] Of these five were not particularly critical of their present services. One wants additional carrier service out of Houston for competitive purposes and four support certain of the applicants for such improvements in service as may result if their applications are granted. One of the witnesses supporting service between Shreveport on the one hand, and Atlanta and Birmingham and points beyond on the other, complains of slow transit time, lost shipments and poor claim service. Another supporting one of the applicants for service from Atlanta to Houma and Shreveport, La., and Houston, did not complain of the Houston service but considered it slow to the other points. These latter two witnesses have a number of motor carrier services available.

A witness supporting one of the applicants for service from Birmingham, Charlotte, Philadelphia and New Haven to Houston, bases his support upon the proposed schedules of the applicant which he believes provides a faster and more consistent service.

The evidence discloses in general the availability of a substantial number of carriers to serve these witnesses, some of whom seek essentially additional common carrier service to supplement their private carrier operations. There is evidence of a failure or reluctance of some of the existing carriers to handle the shipments of some of the witnesses. Such evidence of selectivity reflects adversely upon existing services and especially where as in the case of the one witness having a substantial amount of freight moving from El Dorado to Greenville the

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[109] Witness Nos. 167, 353, 462, 505, 536, 537, 750, 777.

failure of the direct line carrier to perform under its certificate left the shipper with only an extremely circuitous common carrier service available.

Paint and Related Items

Eleven witnesses who ship or receive paint, lacquer and related items testified in the aggregate on behalf of six of the applicants. Bowman call 6 witnesses, 3 of whom also supported Johnson. Herrin called 2, and Roadway, Strickland and Baggett called 1 each.

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The six witnesses supporting the Bowman application ship or receive an aggregate of about 413,000 pounds of paint and related items per month [110] One supporting the proposed service from Dallas to Miami uses ETMF or Herrin as origin carriers and the customer specifies the delivering carrier. He has used a number of different connecting line services but wants single-line service to speed delivery of his shipments. The witness supporting service from White Plains and Hicksville, N. Y., to Dallas uses rail and freight forwarder services. He has made no investigation as to what motor carrier services are available to him.

A New Orleans witness receives shipments from Chattanooga via Ryder. That carrier's service has been very good since the witness complained to the president of the company, but he does not want to be dependent upon one single-line carrier. He is not aware that other single-line service is available to him, but would have no objection to trying it. He does not want to use joint-line service because of in transit delays at interline points. A Chattanooga witness also wants single-line service as proposed by Bowman to points in Arkansas, Louisiana, Mississippi and Texas. He is using private carriage and the common carrier

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[110] Witness Nos. 288, 406, 576, 669, 846 and 914.

service of Bowman and its connections. He believes that single-line service as proposed will give him faster transit time. He is not now using some of the single-line services which are available to him.

One of these witnesses supporting the proposed single-line service from Cantonment, Fla. (16 miles north of Pensacola), to the company's branch offices in Memphis, Camden, Ark., Monroe, La., Houston and Kansas City, is not using the single-line service now available to some of the points. He is using the joint-line services of the carriers he supports for single-line service. At times he has a problem getting pickups prior to his normal 3:30 p.m. closing time which then entails paying an employee overtime to keep the loading platform open. Another witness supporting service from Baltimore and Atlanta to points in Arkansas, Louisiana, Mississippi and Texas, also is not using some of the single-line services now available to him for this area. In addition he has a number of joint-line services available. Both of these witnesses believe that the proposed single-line service of the applicants supported may improve the transit time for their shipments.

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Two witnesses supporting the Herrin application for service, one from Mobile to Houston (approximately 25,000 pounds per month) and the other from Atlanta to Baton Rouge (approximately 1,000 pounds per month) have both single-line and numerous joint-line services now available to them.[111] The service, however, is not completely satisfactory because it is slow and in addition, there is too much damage in connection with the single-line service from Mobile to Houston. They believe that the proposed schedules of Herrin will result in improvement of their competitive positions. Another witness supporting the Strickland application for service from Atlanta to

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111 Witness Nos. 271 and 640.

Jackson and Greenville, Miss., uses the services of Dixie, Ryder, Deaton and Gordons to Jackson and the latter two to Greenville.[112] He experiences occasional pickup delays and is desirous of faster transportation of his freight. He ships approximately 1,500 pounds per month.

A Montgomery, Ala., witness supporting the Baggett application for service to Texas points, uses West, Dixie or AAA as origin carriers with open routing beyond.[113] He uses Roadway out of Montgomery to some points but was not aware that Roadway serves Texas points; nor has he tried the service of Baggett and its connections over the New Orleans gateway to Texas points. He ships approximately 9,000 pounds of freight per month to Texas. At times he has difficulty in obtaining open-top equipment and experiences slow transit time. Another witness supports the Roadway application for service from Knoxville, Tenn., to New Orleans (approximately 5,000 pounds per month) and to Loxley and Prichard (Mobile), Ala., for contemplated future accounts (which may total 2,500 pounds per month).[114] The shipments to New Orleans have been handled by Ryder in single-line service and by Central, Georgia Highway Express or Robinson as origin carriers for joint-line service. He has not tried the joint-line service of Roadway over the Birmingram gateway from which there are numerous connections to New Orleans and Mobile. His support is based upon a desire to improve transit time for his shipments.

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Three of these 11 witnesses have very little knowledge of transportation services available to them and six supporting their respective applicants for additional transportation service have

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[112] Witness No. 161.

[113] Witness No. 68.

[114] Witness No. 264.

not tried or are not using some of the motor carrier services now available, including some single-line as well as joint-line service. In most instances these 11 witnesses base their support of the respective applicants upon the proposed schedules which they believe will result in service superior to that which they are receiving.

Twenty-one witnesses shipping such items as greeting cards, business forms, printing materials, magazines, catalogs, books, checks, admission tickets, and similar items and materials testified on behalf of six of the applicants. Herrin, Red Ball, Bowman and Jones each called four witnesses and Roadway called five. Two testified on behalf of other applicants. Transit time is important to these witnesses to meet seasonal demands or date limitations of their products, and to replenish limited inventories.

Six of these witnesses shipping from Arkansas points to Atlanta, Birmingham and to points beyond particularly in the southeastern States testified on behalf of Bowman and Jones.[115] Their testimony relates to approximately 335,000 pounds of freight monthly. The major portion (250,000 pounds) originates at Osceola, Ark., which is served by Gordons, Campbell Sixty-Six, ET&WNC, ABF, Jones, M. A. T. Lines, and Superior. Gordons provides single-line service to Atlanta and Birmingham, Campbell Sixty-Six to Birmingham, ET&WNC to various points in the Carolinas and Tennessee, and Jones and ABF to Memphis and other points. The Osceola witness who supports the Jones application complains that Gordons will not make daily pickups and that Campbell Sixty-Six has stopped serving his plant, leaving only Gordons with single-line service to Birmingham and Atlanta. In response to urging by this witness Gordons provided a daily pickup for about two months from its Memphis terminal about 50 miles away, but found that the volume of freight did not warrant daily pickup on less-than-truckload shipments. Arrangements were therefore made for Gordons to pro-

[115] Witness Nos. 710, 764, 784, 833, 843, 851.

vide a trailer pool at Osceola and to spot both a northbound and a southbound trailer at the plant for the accumulation of less-than-truckload freight. When ready the plant calls Gordons to move the freight. This arrangement and service is in operation.

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The Little Rock witness is served by substantially the same group of carriers authorized to serve Osceola and there are a number of carrier services available to him, including some combinations of service which he has not tried. He complains that Campbell Sixty-Six will not pick up shipments under 500 pounds and also of slow transit time. The witness from Fayetteville uses Campbell Sixty-Six to Birmingham interlining there with Bowman or with Hall for Florida points, and with Transcon or Georgia Highway Express for Atlanta and other Georgia points. The Bentonville witness (who is served by several carriers) complains that he has no single-line service to Atlanta. These witnesses support the proposed Jones service especially to Atlanta (as well as Birmingham) as a means of increasing the number of connecting carriers available for a 2-line service to Florida destinations.

The Fort Smith witness has used the service of Mercury Motors as origin carrier to Memphis with open routing beyond since 1933. The witness from Camden uses the services of Atlas or Southwestern to Memphis for interlining for New York City. They have no serious complaint against their existing services.

Five witnesses testified as to their need for the service of certain of the applicants principally from Atlanta, and one from Birmingham, to Louisiana points, with a minor portion of their freight going to certain Texas, Arkansas and Mississippi points.[116] They ship in the aggregate approximately 190,000

[116] Witness Nos. 98, 99, 103, 184, 641, 835.

pounds of freight monthly to such points. One witness also ships outbound from New Orleans to Mobile and Pensacola. They use such single-line services as Johnson, Ryder, Dixie, Baggett and Campbell Sixty-Six, and joint-line services involving those carriers as well as Bowman, ETMF and possibly others with their various connections over the gateways of Jackson, New Orleans, Shreveport, Memphis and Mobile. Their general complaint is slow transit time, or at least they support applicants for any proposed improvement in service. Some of these witnesses supporting one applicant complain that another applicant's service is unsatisfactory. One commenting that the Dixie service is very good wants available also the single-line service of Roadway as an additional carrier. Roadway now handles 60 percent of his freight to other areas and the additional authority will tend to relieve congestion at his limited shipping facilities.

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Four of the Roadway witnesses supported that carrier's proposed service to the Gulf Coast area including Baton Rouge, New Orleans, Mobile and Pensacola from such diverse origins as York and Bedford, Pa., Englewood Cliffs, N. J., Rockville, Md., and Burr Ridge, Ill. (Chicago commercial zone).[117] They ship approximately 220,000 pounds of freight monthly to these points. They all have a number of carrier services available to them. However, they complain of slow transit time, poor tracing, and one complains that Johnson will not make pickups on Saturday or Sunday or after 6 p.m. Three use the services of Roadway extensively in other areas and desire its service to the Gulf Coast area as a means of limiting the number of trucks calling at their small shipping docks and of obtaining a more satisfactory transportation service.

A witness shipping from Cutler Ridge, Fla. (15 miles south of Miami), to Houston, Dallas, Lubbock and San Antonio and

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[117] Witness Nos. 91, 218, 389, 468.

one shipping from Kansas City to points in Florida support the Bowman application.[118] From Kansas City the witness is using the services of Campbell Sixty-Six, Transcon, Gordons, and T.I.M.E. to either Birmingham or Atlanta for interline to carriers for Florida destinations. He also uses the services of freight forwarders and REA. Although he does not route beyond the originating carrier he assumes that Bowman has been a delivering carrier on some of his shipments. The witness shipping from Cutler Ridge to the Texas points also uses Bowman as a pickup carrier with Ryder, Transcon, T.I.M.E., ETMF or Gordons as delivering carriers. They have an aggregate of about 120,000 pounds of freight per month. Both of these witnesses urge approval of the Bowman application for single-line service between points in Florida and points in that applicant's proposed extended territory as a means of providing faster service and eliminating tracing difficulties.

Three Texas shippers (two supporting the Herrin application and one that of Red Ball) seek service from Dallas and Houston to Atlanta, Columbus, Birmingham, Mobile, Jackson and Greenville.[119] The Houston shipper has been in business for 3½ years and has always used bus or express service for his shipments. He has no experience with the existing transportation services. One of the Dallas (Arlington) shippers, who schedules his shipments for about 2:30 p.m. because of limited dock space, has daily pickup service by six carrires including

Roadway which will continue to handle its Atlanta shipments. Both Dallas witnesses are interested in obtaining more single-line services. One complains that certain of the existing single-line carriers have not solicited his business. They have a number of carrier services available which they are not using.

[118] Witness Nos. 694 and 788.

[119] Witness Nos. 227, 273, 520.

The 21 witnesses in this group support their respective applicants with the hope of improving their available transportation services primarily with more single-line service, better pickup service, and faster and more consistent transportation. They have a number of transportation services available at present. Their products can be and are handled in joint-line service to many points.

Sporting Goods

Three shippers of sporting goods from Arkansas origins and two from Texas origins were called as witnesses by Baggett (1) and Jones (4).[120] Two also support the Bowman application and one that of Johnson. These witnesses ship golf and fishing equipment from Fayetteville, Ark., and Fort Worth, Tex., to Atlanta and Birmingham and points beyond in the Southeast, Middle Atlantic and Eastern States, oars and paddles from Conway, Ark., and air rifles and related items from Rogers, Ark., to the same destination area, and motorcycle parts and accessories from Houston to Birmingham.

The motorcycle witness has used the services of ETMF and Mercury Freight and receives about 2,000 pounds of freight monthly. He places his orders for such supplies with his California supplier who in turn ships from the Houston warehouse. Although complaining of slow transit time the witness has no knowledge of the length of time his shipments are in transit. He gave no information concerning inadequacy of transportation services available. Neither of the witnesses from Conway and Forth Worth, who ship respectively about 7,500 and 1,000 pounds of freight monthly, have any knowledge of the transportation services available to them nor have they made any investigation to determine such information. Both complain

[120] Witness Nos. 121, 133, 458, 483, and 681.

of slow transit time and damage to the display cartons in which their shipments

are made. From Fort Worth the witness is using the services of Roadway and Mercury Freight, and from Conway shipments are originated by either ABF or Holt with open routing beyond the origin carriers. The Bowman proposed service from Conway contemplates a two-line haul and that of Jones a two-line service for many points. Such service is now available through a number of connections.

The Fayetteville witness ships approximately 25,000 pounds of freight monthly into the specified area and contemplates a growth of 300 to 500 percent in the next year with the addition of new items. He uses the services of Jones and its connections. Approximately 80 percent of the freight requires two or more carriers to reach destination. It is his opinion that the proposed single-line Jones service to Birmingham and Atlanta will speed up delivery of his shipments. The Rogers' witness ships approximately 450,000 pounds of freight monthly to Atlanta, Birmingham and points beyond. His plant is served by Campbell Sixty-Six, Red Ball, Jones, ABF and Frisco Transportation. Campbell Sixty-Six has single-line service to Birmingham from which point interline service to the broader area is available. To Atlanta a joint-line service is used. This witness too believes that the proposed Jones second day service to Atlanta and Birmingham will improve the transportation now available for him.

The support of these five witnesses for their respective carrier services is based essentially upon the schedules of the applicants which they believe will result in improved transportation.

Plastics

Thirty-two of the witnesses who ship or receive plastics and plastic products testified in the aggregate in support of all of the applicants. Some testified on behalf of more than one.

Six of the witnesses shipping or receiving plastic products including polyethylene film, liquid and foam plastic, plastic pins, sheets, rods, tubing, pipe, etc., from Georgia, North Carolina and South Carolina origins testified concerning their need for services proposed by certain of the applicants, particularly to Texas, Louisiana, Mississippi and Arkansas points.[121] Their testimony relates to an estimated 45,000 pounds of

freight monthly. The witness shipping from Columbus, Ga., is using the services of Ryder, Dixie, Roadway and of Cole/Herrin. He also has available the connecting line services of West, Mercury Freight and others. He complains of slow and inconsistent transit time. At one time Ryder's service was stated to have been very good, but it deteriorated and this shipper has not used Ryder in the past two years. The Beaumont plant to which he ships will not accept deliveries after 2 p.m. and it is therefore necessary at times for the delivering carrier to hold shipments an extra day.

Witnesses from Everman (Fort Worth), Tex., and Shreveport, La., support the Strickland proposed joint-line service from Marietta and Cartersville, Ga., respectively. The former lets the shipper route his freight and a number of multiple line services have been used. Because of poor delivery service which resulted in the temporary closing of a plant a few times he has changed his source of supply to Detroit and receives the shipments via Strickland. If the Strickland application is granted

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[121] Witness Nos. 308, 838, 794, 15, 38, 795.

he will consider changing the supply source back to Marietta. He also would use Strickland in the movement of his finished products to Atlanta for interline with other carriers to points in the Southeast, particularly Florida destinations. The Shreveport witness supports the Strickland application both for the receipt of materials from Cartersville which Strickland would receive at Atlanta from the originating carrier, and for shipments from Shreveport to Mississippi and Arkansas points on U. S. Highway 82 and to Birmingham. His plant is served by a number of carriers. He is interested in using the service of Strickland more extensively outbound inasmuch as that carrier has served him well on the inbound freight.

The witness from Gastonia, N. C., uses the service of Bowman as origin carrier with open routing beyond. He also has available single-line service of Ryder and of Roadway to a number of points in the area. He has not used Ryder for approximately two years because of poor pickup service and only recently became aware of Roadway's service. His shipments are light and bulky. He is of the opinion that Bowman's proposed single-line service will make him more competitive in this particular area. Similarly, the Spartanburg, S. C. and Cornelius, N. C., witnesses use the services of a number of motor carriers and believe that there are others available which they have not tried. Their support is based upon a desire for single-line service and schedules as proposed by applicants for whom they testified.

Another six of these witnesses ship a total of about 250,000 pounds of freight monthly from Texas origin points.[122] Two of them support the Herrin application for service from Dallas to Mobile and Jackson, one shipping plastic pipe and fittings and the other phonograph records. They have used the services of

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[122] Witness Nos. 232, 269, 306, 471, 495, 808.

Red Ball, Braswell, Gordons and T&P Transportation. One has discontinued using Braswell because of poor service and the other has made Braswell its preferred carrier. The pipe shipper has experienced some very slow service and tracing difficulties.

Another Dallas shipper witness has been operating his plant for eight months shipping his products (seamless flooring and resin) via Red Ball to nearby Texas points and Texarkana. He anticipates a business growth which will encompass shipments to points in the southeastern States and supports the applications of Jones, Johnson and Bowman. He made no mention of the existing transportation services available. Similarly, a witness shipping magnetic computer tape from Graham, Tex. (west of Fort Worth), to Atlanta, Birmingham and points in the Southeast, wants fast single-line service for his shipments many of which are of minimum weight. Yet, he is not familiar with the carrier services available nor with the fact that the proposed Red Ball service which he supports does not include single-line service to points beyond Atlanta and Birmingham.

A shipper of decorative plastic laminate from Houston to Greenville, Jackson, Birmingham, Atlanta and points beyond, also receives such materials at Houston from Tampa, Fla., and Atlanta and Jackson. He has used the services of Ryder, Mercury Freight, ETMF and bus but complains that their transit time is too long and too inconsistent. He is not aware of other transportation services available and supports the Strickland application.

The witness shipping the major portion of the tonnage herein involved (230,000 pounds per month) manufactures water closet seats. He supports the proposed Red Ball service from Pineland (in east Texas) to points in Mississippi, Alabama and Georgia. He handles about 70 percent of the tonnage by his private carrier operation and uses Red Ball as origin carrier for the remainder. He is interested in discontinuing his private car-

rier operations and wants a single-line service to Atlanta and Birmingham as proposed by Red Ball.

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Three of the witnesses are interested in faster service from Arkansas or Oklahoma origins to their respective destination areas.[123] The witness from Fort Smith supplies his Birmingham customer with about 100,000 pounds of molded chair seats, desks and other items monthly. The major portion of that freight is picked up by the Birmingham buyer as a back haul for his private carrier operation but for the remainder he uses the single-line service of Gordons or the joint-line service of Jones Jack Cole over the Memphis gateway. He is aware that there are several connections available out of Memphis. The other Arkansas witness ships approximately 50,000 pounds of plastic protective coating material (in metal containers) monthly from Hope, Ark., to Atlanta and North Carolina points. He is using the service of Strickland interlining with T.I.M.E., ET&WNC or Transcon at Memphis, or that of Midway interlining with ET&WNC or T.I.M.E. at Little Rock. Some other carriers offer service for truckload shipments from Hope. The Oklahoma witness ships approximately 30,000 pounds of fiberglas pipe monthly from Tulsa to Bartow, Fla., using the joint-line service of Roadway Ryder over the Charlotte gateway. He finds that service superior to that of T.I.M.E. or Transcon to Atlanta and either Ryder, Central, Terminal, or Tamiami beyond, which he previously used and experienced delayed shipments and difficulties in tracing. However, the Roadway/Ryder transit time is a little slow because of the circuity involved. He has not tried the Jones Ryder service over the Memphis gateway or that available over either the Birmingham or New Orleans gateways but has no objection to trying them.

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[123] Witness Nos. 774, 771, 742.

Four witnesses from the New England area testified, two each supporting the applications of Roadway and Johnson.[124] The Roadway application was supported for service from Wilmington and Salem, Mass., to the Gulf Coast area including New Orleans, Baton Rouge, Pascagoula, Gulfport, Biloxi, Mobile and Pensacola. That of Johnson was supported for service from Worcester, Mass., to Jackson, Miss., Baton Rouge, Monroe and Shreveport, La., and the Houston and Dallas areas in Texas; also from Woonsocket, R. I., to Texas points. In the aggregate their testimony relates to over 310,000 pounds of freight monthly. All of these shippers have a number of carrier

services available to them. The Roadway witnesses use the services of that carrier extensively and it will tend to relieve carrier congestion at their plants to have the services of Roadway available to the additional Gulf Coast points. From Wilmington the shipper uses T.I.M.E. as the originating carrier with interline at Memphis to Herrin for New Orleans, to Red Ball for Baton Rouge, and to Gordons for Biloxi. Roadway, Strickland and Johnson are used as origin carriers from Salem. The witnesses supporting Johnson use the services of car-loading companies extensively as well as that of a number of motor carriers. They both prefer single-line service. The Woonsocket witness, who uses the joint-line service of Johnson/ETMF to Beaumont, Tex., and reports it to be very good, has not tried that joint-line service to other Texas points. The Worcester witness complains that Roadway and Transamerican have been unable to furnish equipment. Akers serves three of the four origin points and its service is used by two of the shippers for destinations in the South, but its joint-line service to southwestern destinations is not used.

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[124] Witness Nos. 392, 512, 860, 903.

Five of the witnesses originate shipments at either Montgomery or Birmingham, Ala.[125] Two of the five receive their freight at Lafayette, La., totalling approximately 1,500 pounds per month. They use the services of Ryder or of West and its connections, as well as some bus and express service. They complain of slow transit time and unsatisfactory handling of claims, and support Herrin's proposed single-line second day service as a means of correcting those deficiencies. One of these witnesses was not familiar with the transportation services available and leaves the routing of his freight up to the shipper.

Two of the witnesses supporting the Deaton application for single-line service from Birmingham to Baton Rouge, Beaumont, Texas City, Orange and Houston, ship a total of about 20,000 pounds of freight monthly to those points. One who is using the services of Ryder, Viking, and until recently Campbell Sixty-Six, to Baton Rouge has no complaint against those services. The additional Texas points are now served from his Dallas facility which is to be closed. He has made no investigation of transportation services available from Birmingham to the Texas points. The other Birmingham witness is using the services of Mercury Freight and Ryder. His shipments often are delivered to construction sites at

the named points. The witness supporting the Baggett application for service from Montgomery to Texas points ships approximately 300,000 pounds of freight monthly to that area. He is using private carriage as well as the services of Baggett, AAA and Caden as origin carriers with Transcon, ETMF, Red Ball and others as delivering carriers. He has not used the Mercury Freight service. He finds the existing services adequate as a secondary service to private carriage. However, he believes that

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[125] Witness Nos. 153, 165, 197, 562, 564.

the interlining of freight causes damages and delays. It is his opinion that the proposed Baggett service would help solve these problems and possibly would enable his company to eliminate its Dallas warehouse.

Three witnesses called by Roadway and two by Bowman ship approximately 600,000 pounds of freight monthly into the Texas, Arkansas, Louisiana and Mississippi areas from origins in New Jersey, New York, Maryland, Ohio and Tennessee.[126] The witness shipping the major portion of this freight (about 400,000 pounds monthly) supports the Bowman application for the transportation of plastic and fiber pipe and conduit from Orangeburg, N. Y., to Texas, Louisiana, Arkansas and Mississippi points. He uses the services of rail, Sealand, Malone and Coker, which all provide certain rate advantages, and also those of Transamerican, Midwest and of Bowman and its connections. Roadway, Strickland and T.I.M.E. have indicated to him that they are not interested in this freight. Approximately 80 percent of his shipments require flat-bed or converta van equipment and 75 percent require a stopoff service. The shipper experiences difficulty in obtaining flat-bed or converta van equipment from time to time. It is more difficult to obtain service if an equipment interline or stopoff service is involved as the carriers with such equipment seem unwilling to let it go beyond their own lines. The other Bowman witness (also supporting the application of Johnson) ships approximately 8,000 pounds per month of plastic bottles and caps from Baltimore to Dallas, Houston and Little Rock using the services of Roadway, Transamerican, Associated and a freight forwarder. He complains of slow transit time and delayed pickups by some of the carriers. However, there are a number of both single-line and joint-line services available which he has not used and of which he is aware.

The three Roadway witnesses base their support of that carrier upon their desire for its proposed single-line services as a

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[126] Witness Nos. 496, 664, 858, 861, 904.

different carrier services. He is particularly desirous of a consistent single-line service from Atlanta to Monroe, La. In his opinion it will be a convenience to have available the proposed Red Ball single-line service from Atlanta and Birmingham inasmuch as that carrier now serves many of the Louisiana and Mississippi points in which his clients are interested. The witness also supports the Johnson application particularly in connection with a single-line service from origins beyond Atlanta and Birmingham.

Another witness representing four companies located at or near El Dorado, Ark., and one at Texarkana is interested in single-line service to Atlanta and Birmingham as a means of speeding up transit time. This witness' clients are served by a number of carriers and the witness likes to use them all. As a result at times he uses a three line service when two line service is available. One of the companies he represents ships light and bulky freight which some of the carriers use as top freight to fill out loads. This results in splitting shipments and in some delays. Another client's shipments are primarily minimum weight shipments. It is his opinion that the proposed services of Jones, Bowman and Strickland will benefit the shippers he represents.

The consultant from Griffin, Ga., represents five companies located in Georgia which ship their products to Arkansas, Louisiana, Mississippi and Texas points. These shipments are routed through Atlanta to connect with carriers operating to points in those States. From the Georgia origins to Atlanta private carriage of local truck line services are used. These companies have

used the services of Gordons, Ryder, T.I.M.E., Dixie, Roadway, Transcon and recently that of Deaton from Atlanta. The witness is of the opinion that the proposed Strickland service

from Atlanta will afford faster and more dependable transportation. A transportation consultant located in Massachusetts is interested primarily in shipping a variety of commodities from Atlanta to points in Alabama, Mississippi and Louisiana. However he has no knowledge of the transportation services his companies are using nor of those available.

These witnesses urge that the companies they represent need faster and more consistent transportation services than they now have available.

Automotive Parts and Marine Supplies

Twenty-six of the witnesses who ship or receive parts and supplies for automotive and marine equipment testified in the aggregate on behalf of all of the applicants except Herrin and Baggett. Red Ball called 7 witnesses, Roadway called 5, Strickland, Bowman and Jones 4 each, and Deaton and Johnson 1 each. Some of the witnesses testified on behalf of more than one applicant.

The testimony of 10 of the witnesses whose shipments originate primarily at Atlanta relates to approximately 95,000 pounds of freight per month.[129] Such freight is destined to Hamburg, Ark., Jackson and Greenville, Miss., Baton Rouge, New Orleans, Monroe, Zachary and Haynesville, La., and Dallas, Fort Worth, Houston and Amarillo, Tex. The witnesses have used to varying degrees the services of Ryder, Dixie, ETMF, Gordons, Campbell Sixty-Six, Deaton, Transcon, Roadway, Jones, Red Ball, Braswell, Shippers' Express, GFA, West, Rose and perhaps others. Some use bus service for their rush shipments, especially for small shipments of automobile parts destined to such points as Hamburg, Ark., and Zachary and Haynesville, La. The primary complaint against present serv-

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[129] Witness Nos. 72, 90, 118, 188, 480, 569, 588, 656, 722 and 820.

ices voiced by these witnesses is slow transit time and some also complained of poor tracing and splitting of shipments so that a complete shipment is not received on a single delivery. Two of these witnesses made no mention of dissatisfaction with existing services. Most of them do not route their own freight although they could request specific routing or make changes in routing. Several were not familiar with the transportation services being used or available but testified in favor of the proposed schedules of the respective applicants supported.

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Four other witnesses[130] testifying as to their need for service from Birmingham, Ala., and Hartwell, Ga., to Baton Rouge and New Orleans, from Montgomery, Ala., to Mansfield, La., and from Stone Mountain, Ga., to Jackson, Greenville and Greenwood, Miss., ship or receive a total of approximately 66,000 pounds of such freight monthly. The Hartwell shipper supporting Roadway for service to Baton Rouge and New Orleans uses that carrier extensively in other areas and would like its single-line service to these Louisiana points. Its joint-line service via Harper Ryder over the Atlanta gateway has been satisfactory but the joint-line service to New Orleans in which the interline at Atlanta is with either Johnson or Dixie is too long and inconsistent. No reason is given why the Harper-Ryder service is not used to New Orleans, or some of the other available joint-line services are not used. The witness testifying in favor of the proposed service from Birmingham to Baton Rouge is seeking additional transportation service and made no complaint against the existing service. The Mansfield witness is using a three-line service from Montgomery and supports Red Ball's application to reduce the service to two-line. He has not tried, nor is he aware of the two-line services now available. There are a number of joint-line services available

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[130] Witness Nos. 107, 200, 559, 817.

from Stone Mountain, Ga., to the three Mississippi points named. The witness supporting Strickland for this service was under the mistaken impression that Strickland proposed a single-line service from Stone Mountain.

Four witnesses testified in the aggregate in support of service between Dallas, Fort Worth and Houston, on the one hand, and, on the other, Jackson, Greenville, Miami, Atlanta, Birmingham and points beyond in the Southeast and Middle Atlantic areas.[141] Approximately 25,000 pounds of freight per month is involved in their testimony. These witnesses are using numerous carrier services including Mercury Freight, Roadway, ETMF, Gordons, Herrin, Braswell, Transcon, Southern Plaza, Consolidated and that of freight forwarders and air express, the latter especially for many shipments which are under 25 pounds. Their complaint against the existing service is that it is slow and inconsistent, and one witness complains of poor pickup service. Another witness knew that there were a number of single-line services available which he has not tried.

All were of the opinion that the proposed schedules of the carriers they support will provide them with an improved transportation service.

Three witnesses testified as to their need for Jones' proposed service from (1) Marshville, Mo., to Texarkana, Ark., and Atlanta, (2) from Oklahoma City to Texarkana, El Dorado and Magnolia, Ark., and Atlanta, and (3) from Siloam Springs, Ark., to Atlanta and Birmingham.[142] Approximately 265,000 pounds of less-than-truckload freight monthly is involved in their testimony. Siloam Springs is served by Campbell Sixty-Six, Jones, ABF, and Ruble Transfer, and the witness tries to

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[141] Witness Nos. 321, 374, 508 and 421.

[142] Witness Nos. 713, 734, 791.

use all of those carriers. He uses the single-line service of Campbell Sixty-Six to Birmingham and the joint-line service of Jones Transcon to Atlanta. The Oklahoma City witness uses the joint-line service of Jones Southwestern to the Arkansas destinations and REA is used for 90 percent of the traffic to Atlanta. The remainder is routed Jones Bowman joint-line or Transcon single line. From Marshfield to Atlanta the single-line service of Yellow, Watson-Wilson, Roadway and T.I.M.E. and the joint-line service of Jones and its connections have been used, and to Texarkana the witness uses the joint-line service of Campbell Sixty-Six ETMF. The witness complains of slow transit time and tracing difficulties. They view the proposed second day service of Jones as affording a faster and more satisfactory transportation service than is now available.

Five witnesses testified concerning their need for transportation service from points primarily in the mid-western and Middle Atlantic areas to the Gulf Coast.[1] One supporting service from Akron to New Orleans, Baton Rouge and Mobile ships approximately 8,000 pounds per month and uses the service of ABF to New Orleans and its connections back to Baton Rouge, and that of Roadway West to Mobile. He has no complaint against those services but prefers single-line service. Another shipping from Toronto, Canada to Pascagoula, Baton Rouge, Mobile and Pensacola complains of slow transit time and excessive handling. He is interested in reducing his three-line service to two-line and supports the Roadway application. That carrier's service is being used at present and Roadway offers a trailer interline service for this shipper. A witness from Jackson, Miss., who receives supplies from various New England and Middle Atlantic sources uses numerous carrier services. He complains of slow transit time, damage and poor tracing.

[1] Witness Nos. 447, 448, 592, 906, 925.

He has not tried the joint-line service of the applicant he is supporting nor that of some of the other carriers available. Another witness receiving approximately 25,000 pounds of freight monthly at Pascagoula from midwest and Middle Atlantic origins also uses the services of numerous carriers including Roadway, Johnson, Gordons, Cole, Wilkerson and West. He has not investigated concerning the available origin carrier services. He complains that his present service is slow and tracing is difficult, but states that his complaint does not relate to the service of Roadway. Johnson or Red Ball. He has not made any investigation as to the carrier services available at the various origins. The final witness receives primarily cordage items, but includes other articles used in the maritime, oilfield and hardware industries. He receives approximately 265,000 pounds of freight per month from Middle Atlantic origins at various Gulf Coast destinations. About 68 percent of this freight is received in truckload quantities. This witness has no problems with his truckload shipments but complains of excessive transit time and damage in connection with the less-than-truckload freight. He has used the services of Roadway, Strickland, Johnson, Cole, RC, Ryder and Malone, the latter primarily for truckload service. He has discontinued using Strickland, Johnson and Cole because of poor service some of which resulted in loss of business. He now favors Malone for both truckload and less-than-truckload shipments. He has found Roadway's service in other areas to be excellent and supports its proposed single-line service to the Gulf Coast points.

The testimony of these 26 witnesses reflects no lack of transportation service, but rather as to most of them a need or desire for faster transportation service, better tracing service, and to the extent possible, single-line service to reduce handling, damage and interline delays.

Candy

Nineteen of the witnesses were manufacturers, shippers, and receivers of candies and confectionaries. Bowman called 6 of these witnesses, Jones 4, Johnson, Red Ball, Baggett and Herrin called 2 witnesses each, and Strickland 1. Several of the witnesses support more than one applicant. The shipments move primarily in less-than-truckload quantities.

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Three shippers at Atlanta support six of the applicants for service in shipping approximately 3,400,000 pounds of candy a year from Atlanta to points in Mississippi, Louisiana, Arkansas, Texas, Oklahoma, Missouri, and Chicago, Ill.[134] They use in either single line or joint line the services of such carriers as Baggett, Ryder, T.I.M.E., Dixie, Alabama-Georgia, Bowman, ETMF, Gordons, Deaton, Alterman, and Refrigerated Transport, the latter two being specialized haulers of products requiring refrigeration. Pickup service by Ryder has at times been poor. They also complain of present transit time and believe a single-line service will speed up delivery. Two of the three ship chocolate candy which requires protection from temperatures of over 80 degrees Fahrenheit. Because of lack of adequate less-than-truckload refrigerator carrier services these shippers curtail to some extent their chocolate shipments during the summer months. Some shipments are handled by carriers using dry ice and insulated equipment as protective measures, but that is not entirely satisfactory as a protective service and also limits usage to shipments that will not be held over a weekend before delivery.

Two candy shippers from Fort Worth and Necogdoches, Tex., ship over 1 million pounds of candy to Atlanta, Birm-

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[134] Witness Nos. 71, 77, 127.

ingham, Greenville, Jackson, and other points in Mississippi, Georgia, Florida, North Carolina, and South Carolina.[135] They have used the existing services of Red Ball, Roadway, ETMF, Transcon, Jones, and Mercury Freight. The latter carrier made special arrangements with the Fort Worth shipper for once-a-week refrigerated service to handle its shipments. These shippers want single-line service and need protective services for the transportation of their product. They complain that adequate protective service is not provided resulting in damage, and that a consistent faster service would permit use of dry ice for certain destinations. One of the shippers supports Red Ball's proposal for a consistent service from Nacogdoches to Atlanta, Birmingham, and Greenville, and the other supports the proposed schedules of Johnson, Bowman, and Jones for refrigerated service to Atlanta, Birmingham, and points in Georgia and that of Strickland for its proposed service to Mississippi points.

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A ltl shipper at New Orleans supporting the Bowman application and one at Thibodaux, La., supporting Herrin, shipped to Birmingham, Nashville, Chattanooga and other points in Tennessee, Alabama, Mississippi, Florida and Georgia.[136] Shipments are made daily or several times a week and a consistent service is needed to satisfy customers and minimize inventories. They use the services of Herrin, Saia, Ryder, Campbell Sixty-Six, Dixie and West. The shipper at New Orleans needs a protective service and desires single line over multiple line. It is believed that a better service would stimulate growth. There are existing services available, including refrigerated service, which these shippers have not used.

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[135] Witness Nos. 252, 792, 226.

[136] Witness Nos. 567, 635.

Russell Stover Candies, Inc., ships approximately 2.5 million pounds of candy yearly from its Loring, Kans., plant directly to Atlanta, 40,000 pounds to Birmingham, and 25,000 pounds to Greenville.[137] Atlanta serves as a warehouse and distribution point for accounts in Georgia, Alabama and Mississippi and about 1,500 pounds of candy is shipped weekly out of Atlanta to points in those States. About half of the tonnage to Atlanta moves in the shipper's own vehicles. The remainder generally is handled by private carriage or a local common carrier from Loring to Kansas City where it is interlined with Campbell Sixty-Six, Watson-Wilson or Jones. The latter also serves Loring direct. The witness supports the applications of Bowman, Jones, and Red Ball for service from Kansas City to Birmingham and Atlanta, and Red Ball only on the Greenville freight. The candy requires protection from temperatures above 80 degrees Fahrenheit. According to the witness, Watson-Wilson has provided both good and poor service and at times has experienced a shortage of refrigerated equipment. The second day service proposed by the applicants would be helpful to this shipper.

A shipper of candy at Oklahoma City ships yearly about 426,000 pounds to Atlanta and other points in Georgia, 362,000 pounds to Birmingham and other points in Alabama, and lesser amounts to points in Arkansas and points in Texas served by Jones.[138] It has used the services of T.I.M.E., Transcon and Jones as origin carriers. Except for service on chocolate items, present

carriers are satisfactory. Chocolates are part of most candy shipments, however, so a protective service is needed. Jones has provided such a protective service to Georgia and Alabama

[137] Witness Nos. 29, 725.

[138] Witness No. 854.

points in conjunction with Bowman, which service has been satisfactory, but the shipper wants a single-line service such as here proposed by Jones. In one instance, 9,000 pounds of chocolates being returned from Birmingham to Oklahoma City were lost because of lack of refrigeration.

A manufacturer at Augusta, Ga., shipped 1.5 million pounds of candy in 1965 from its Augusta plant and Atlanta warehouse to points in Louisiana, Mississippi, Arkansas, Texas, Oklahoma and Missouri.[139] It is supporting the applications of Jones, Johnson and Bowman. Its greatest need is to points in Louisiana and Mississippi, and New Orleans represents the largest single point in Louisiana. Johnson now has single-line service from Augusta and Atlanta to New Orleans which it has used and found satisfactory. For that service it uses REA, however, because of a close working relationship. Other motor carrier service is available which it has never tried, including the joint-line services of Bowman/Jones. It is satisfied with the service of Caudell Truck Lines from its plant to Atlanta where it interlines with Alterman. About 70 percent of the shipments are moved during a time when protective service is not needed. Alterman offers a protective service, but after it increased its rates the shipper has not used the service much.

A shipper of peanuts, candy, and bakery goods at Columbus, Ga., supports Herrin and Baggett and shipped by common carrier during the first quarter of 1966 a total of 44,251 pounds to Houston, Fort Worth, Dallas and Beaumont, Tex., and Monroe, La.[140] In the future it also expects to make shipments to Lafayette, Lake Charles, Houma, Baton Rouge, Alexandria, and Shreveport, La. Its own equipment is used on most shipments to Texas points, and for-hire transportation is used on overflow shipments. Roadway, Georgia Highway,

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[139] Witness No. 170.

[140] Witness Nos. 2, 671.

Dixie, Mercury Freight, Baggett and Ryder are some of the carriers it uses from Columbus for direct service and for interchange with such carriers as Red Ball, Herrin and ETMF. It uses Roadway on a daily basis but does not remember that they ever solicited its business. Slow and inconsistent service is the main complaint. Faster direct single-line service of the kind proposed by Baggett and Herrin is desired for its perishable products.

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A shipper at Chattanooga ships to points in Arkansas, Louisiana, Mississippi and Texas.[141] It has about 150 shipments per month weighing from 100 to 4,000 pounds. It uses as origin carriers Robinson, ET&WNC, Ryder, Central Motor, T.I.M.E., Alterman and Bowman. For the most part these services are satisfactory except where refrigeration is necessary. Alterman offers protective service, but its once-a-week pickup is not satisfactory. Protective service is needed on some of its candy from April through August. The Texas points normally are served from the Dallas warehouse which is supplied by the shipper's private carrier vehicles.

A manufacturer of candy and food items at Mount Holly Springs, Pa., ships 5,000 pounds monthly to points in Louisiana, Mississippi and Texas, mostly to Dallas and Houston.[142] It receives inbound about 8,600 pounds monthly from Dallas and Farmersville, Tex. Central, Roadway and Ward are used inbound. Outbound to Texas points Ward Roadway is used. Mason & Dixon has been used to Mississippi. It has not used Johnson's available service to New Orleans with interline to other points and is not familiar with the Ryder/Harris service. It complains of slow transit time because most of its merchan-

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[141] Witness No. 209.

[142] Witness No. 871.

dise must arrive for holiday deadlines. It prefers direct single-line service.

A receiver of candy, drugs, sundries, paper products, and fountain and school supplies at Shreveport, supporting the Bowman and Johnson applications, receives about 150,000 pounds of this merchandise yearly from Atlanta, Augusta, Ga., Chattanooga, Montgomery and Birmingham.[143] It is using Red Ball, Texas and Pacific, Universal Carloading, Herrin and ETMF. The suppliers select the carriers, and the witness did not know what services are available. Its support is based upon applicants promises of fast service.

Two shippers of fruit cake supported the Bowman application, one for service from Greenville, Tex., to Bowman's present points in the southeastern States and along the Eastern Seaboard, and the other from Claxton, Ga., to the proposed Bowman points in Arkansas, Louisiana, Mississippi, Texas and Missouri.[144] Their heavy shipping period is from September to December 15. The shipper at Claxton produced approximately 6.5 million pounds of fruit cake in 1966, of which about 135,000 pounds were destined to the Bowman proposed points in

the States named. The shipments ranged in weight from 64 to 45,126 pounds. It now uses Bowman as its primary pickup carrier with open routing beyond Bowman's lines. Other carriers serve Claxton, but Bowman is the only one which will spot trailers at its plant. The Greenville shipper made about 110,000 pounds of fruit cake in 1966, of which about 10,000 pounds was destined to Bowman points. Its shipments are in small quantities, and it uses Red Ball as its primary pickup

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143 Witness No. 905.

144 Witness Nos. 841, 924.

carrier with open routing beyond. It also uses REA and parcel post to some extent. Greenville is served by Central and Southwestern Transportation Companies in addition to Red Ball. Both shippers complain of slow transit time and are of the opinion that single-line service as proposed by Bowman will expedite their shipments and reduce materially the number of shipments requiring three-line hauls. In this connection, however, it is to be observed that none of the shipments during the 1966 season for the Claxton shipper required a three-line haul although in three instances that service was employed. Neither shipper had investigated the existing available services with a view to routing the freight to destination.

What these shippers really want is a faster single-line refrigerated service for less-than-truckload freight. For the most part, there is plenty of transportation service available, but it lacks refrigeration. Candy and cake usually move in small ltl quantities to a large number of points in a wide area. Refrigeration is only needed for a part of the year. The handling of ltl quantities of freight requiring refrigeration, and especially where a joint-line service may be necessary, presents a number of difficulties for the carriers involved. The use of dry ice also imposes limitations, particularly where weekend delays may be encountered. Many of these shippers do not know what service is actually available, and they have made little investigation to find out. Even if the authority sought were granted, it would provide very little additional service of the type desired. Existing carrier services have been cooperative with shippers in attempting to make practical arrangements to meet their special needs for protective services during certain portions of the year.

Carpet-Floor Covering Witnesses

Thirty-four of the witnesses testified with respect to their needs and experiences in obtaining transportation of carpeting and floor covering within the area of these applications. These

34 witnesses voiced support of all of the applicants, in varying degrees, except Floyd & Beasley. More specifically, Bowman called 8 witnesses and Jones 9, and each was supported by a total of 14 witnesses. Johnson called 4 witnesses and received

support from a total of 10. Herrin also called 4 witnesses, Baggett 3, Deaton and Roadway 2 each, and Red Ball and Strickland 1 each, and these latter applicants were supported only by their respective witnesses.

For the most part the testimony of these witnesses relates to transportation from the carpet manufacturing area of northwest Georgia extending generally from the Chattanooga, Tenn., area on the north to La Grange and Columbus, Ga., on the south and Atlanta on the east, and including such manufacturing points as Dalton, Rome, Cartersville, White, Ringgold, Lyerly, La Grange, Calhoun, Atlanta, and others. It is estimated that the carpeting referred to by these witnesses amounts to somewhere between 1.5 and 2 million pounds per month moving from the northwest Georgia area to points in Texas, Louisiana, Mississippi, Alabama, Arkansas and Oklahoma. The major portion (over 1 million pounds per month) is destined to Texas points, about 30,000 pounds to Tulsa, 30,000 pounds to Little Rock, El Dorado and Springdale, Ark, 25,000 pounds to Baton Rouge, and lesser amounts to various other Arkansas, Louisiana and Mississippi points.

In addition there were witnesses who ship or receive carpeting or floor covering from Trenton, N. J., to Louisiana and Alabama points (100,000 pounds per month), from Philadephia, Carlyle and Marcus Hook, Pa., to Texas, Louisiana and Mississippi points (estimated 50,000 pounds per month), from Greenville, Miss., to the Dallas-Fort Worth area (100,000 pounds per month), and from Houston to Birmingham (60,000 pounds per month).

The eight Bowman witnesses include two manufacturers located at Dalton and La Grange, Ga., and six receivers located at Dallas, Fort Worth and Houston.[145] The latter received shipments from the northwest Georgia carpet manufacturing area as well as from Selma Ala., Nashville, Tenn., and certain points in South Carolina, Pennsylvania and New Jersey. Within the territory covered by these extension applications the manufacturers ship primarily to the three Texas cities named, and in lesser amounts to points in Mississippi, Louisiana, Texas, Arkansas and Missouri.

From some of the origins Roadway and Ryder provide single-line service. However, even where such service is available the witnesses were using joint-line service principally. These include as origin carriers Georgia Highway Express, B-C Truck Line, Baggett, Bowman, RC

Truck Lines and Murdock Freight Lines. The primary complaint concerning the existing transportation services being used is that the transit time is too slow. Exhibits were introduced in evidence depicting transit time in connection with certain shipments which support the conclusion that in some instances there are unreasonable delays, and in other instances service is reasonable. The schedules proposed by applicants are considered by these witnesses to be highly desirable as a means of insuring the buyers of carpet that the merchandise will be delivered promptly and will also enable proper scheduling of the installation work. Failure of the existing carrier services to provide prompt transportation creates problems and expenses such as the maintenance of larger inventories, requiring the purchase of supplies from dealers rather than directly from the mills, loss of sales due to delayed deliveries, inability to schedule in-

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[145] Witness Nos. 89, 131, 297, 363, 429, 436, 477, 493.

stallations properly, inability to utilize cash discount periods, and other competitive disadvantages. Single-line service is desired in many instances to eliminate interline delays, simplify tracing, and to minimize damage resulting from excessive handling.

Four of the Bowman witnesses also support the Jones and five the Johnson applications. Yet at the time these hearings began none had tried the joint-line services of Bowman Jones over the Memphis gateway; and there is no evidence that any had used the service of Johnson either as an originating or connecting line carrier. While the hearings were in progress one of the witnesses began to use the Bowman Jones service and found it very satisfactory, including second day delivery of truckload shipments in those instances where a trailer interline service was employed.

Although the Bowman witnesses express some degree of dissatisfaction with the transportation services they are using, yet in most instances they have made no effort to find what other services are available to them nor tried to improve their transit time by using various combinations of joint-line services available.

At Dalton, Ga., a major manufacturing point, Roadway maintains a terminal and offers pickup service anytime of the day or night to one of the shippers supporting Bowman. This particular shipper is Roadway's largest Dalton account. It also operates its own fleet of 14 tractors and 18 trailers as a private carrier. Its primary originating common carrier is Georgia Highway Express. Although complaining of slow transit time, evidence was presented by protestant Mercury Freight that in the first seven months of 1966 Georgia Highway Express interlined at Birmingham with Mercury Freight 34 shipments from this particular shipper destined to Dallas and Houston. Of these shipments 70.6 percent were

delivered by Mercury Freight the third day and 29.4 the fourth day. In the same period Bowman originated six shipments from the shipper for these two Texas points which were interlined with Mercury Freight, the deliveries being 1 the third day, 2 the fourth day and 1 each on the fifth, sixth and seventh days. The Bowman portion of the service (from Dalton to Birmingham) was 3 shipments the second day, 2 the third day, and 1 the fourth day.

One witness supporting the Deaton application had previously used the single-line service of Ryder from Birmingham to Baton Rouge but changed to the single-line service of Campbell Sixty-Six at the direction of the consignee. The other receives truckload shipments of floor covering in Birmingham from Houston.[146] The latter made no complaints against the services of ETMF, Mercury Freight or Ryder, which it uses, but believes that additional competition is beneficial. The two witnesses supporting the Roadway application both have an abundance of transportation services available.[147] While these four witnesses want faster transit time, their support of the respective applicants is based essentially upon the fact that they have been using the services of, in one instance Deaton and the other Roadway, in other areas and would like to extend the use of such services to the territory involved in their applications.

The Red Ball witness supporting service from Greenville, Miss., to Dallas[148] complained that the single-line service of Jones on its truckload shipments from Greenville, Miss., to Dallas is not a consistent overnight service as it is supposed to be, and that Gordons' service is circuitous (by way of Memphis). A witness supporting the Strickland application for service from Atlanta, Rome, Dalton, and Plainville, Ga., to El

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[146] Witness Nos. 152, 580.

[147] Witness Nos. 476, 882.

[148] Witness No. 231.

Dorado, Ark., complained that transit time it receives on its shipments is too slow.[149] There is no indication that the witness has made any effort to improve its service by trying many of the several joint-line routings available to him.

Of the four witnesses called by Johnson Motor Line,[150] three also support Bowman and one Jones. Their dissatisfaction with the services being used is based upon delays of shipments in transit, either at interline

points or at the origin carrier's terminal. All have available the transportation services of a number of carriers, some of which they were unaware. Their shipments originate at Atlanta and White, Ga., and Philadelphia and Marcus Hook, Pa., destined to Texas, Mississippi and Louisiana points.

The three witnesses supporting Baggett for service from northwest Georgia origins to Texas points have used Roadway's single-line service from some of the origins and the joint-line services of Georgia Highway Express, B-C, RCA, Baggett, Bowman, Murdock and ET&WNC and their various connections.[151] One witness (a manufacturer) also operates 30 tractor-trailer units as a private carrier. The major connecting line services involve RCA or Georgia Highway Express as origin carriers connecting with Gordons or ETMF at Atlanta; Baggett or B-C connecting with Mercury Freight or ETMF at Birmingham; and to lesser extent connections through Chattanooga. Two have received pretty good service by Roadway but want additional single-line service. They have not tried the service of Baggett and its connections over the New Orleans gateway nor a Ryder single-line service to certain Texas points. Other

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[149] Witness No. 114.

[150] Witness Nos. 135, 422, 427, 896.

[151] Witness Nos. 239, 281, 036.

complaints primarily are of slow transit time and delay of shipments at interline points. This has resulted in loss of sales. Two of the witnesses believe that they can reduce inventory costs with a fast single-line service. Baggett has a new terminal near the plant of one manufacturing witness and its services are used extensively throughout Alabama and to New Orleans. The manufacturer would like its services available to the proposed extended territory.

Three of Herrin's four witnesses[152] support its proposed joint-line service through the Atlanta gateway to points on its present routes. None have tried Herrin's available joint-line service over Macon, Memphis, or New Orleans. During the pendency of this proceeding Herrin purchased a route between Atlanta and Macon which permits the joint-line services proposed by these witnesses, although that route is somewhat longer to the Mississippi, Louisiana and Texas points involved than the proposed route through Birmingham. These witnesses have used the services of Johnson, Bowman, Roadway, Ryder and others as origin carriers or in single-line service and complain that the transit time experienced

through these services is too slow. The fourth witness shipping from Columbus, Ga., uses the single-line services of Roadway and Ryder as well as the joint-line services of Georgia Highway Express and others serving Columbus. Its complaint is that there have been occasions when Roadway experienced an equipment shortage, and Johnson has refused to handle a C.O.D. shipment. Primarily the witness wants another single-line service from Columbus to the Southwest.

Four of the nine Jones witnesses[153] support the proposed Jones service from Atlanta to Tulsa in connection with ship-

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[152] Witness Nos. 143, 442, 519, 642.

[153] Witness Nos. 355, 360, 403, 48 , 746, 756, 770; 772, 783.

ments originating at Dalton and Calhoun, Ga. They now use T.I.M.E. or Transcon for the Atlanta to Tulsa portion of the transportation and complain that the transit time is too slow. One witness also complains of an unpaid damage claim in connection with one shipment. The witness for protestant Transcon testified that the Atlanta to Tulsa service of its company is a direct dispatch, and that examination of its records for a 2-week test period in May 1966 disclosed only one shipment for these parties and that it had been received in Atlanta May 17 and was delivered in Tulsa May 19. Two of the witnesses had just learned of the Bowman Jones joint-line service and all are willing to try it to obtain better transportation. One witness now using the Bowman Jones joint-line service over the Memphis gateway expressed the opinion that better service would result if Jones could receive the shipment at the Atlanta gateway. The witness supporting the Jones' service to Springdale, Ark., has used the Bowman Jones joint-line service and found it very good, while the two witnesses supporting the service to Dallas and Texarkana have never tried the Bowman/Jones joint-line service although they support the applications of both carriers. The two Jones witnesses testifying in connection with services from Birmingham, Atlanta and northwest Georgia mill points to Little Rock also support Bowman. While they have a number of joint-line services now available (including Bowman Jones which they have used very little), they prefer single-line service and believe that the proposed second day delivery from Atlanta to Little Rock will be very helpful.

From the foregoing it will be observed that there is not a lack of transportation service available to these witnesses—in fact many have not tried the various services available. A few of these witnesses anticipate a growth in their business in the area involved in these applications, but their support of the applications is not based upon the growth factor. The basic theme of the witness support is that the schedules proposed by the particular applicants they support will give them a service

superior to that now being used . . . in other words better transit time.

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Commodities Requiring Refrigeration

Ten of the witnesses ship or receive fresh or frozen meats, foodstuffs, dyes, and nursery stock which requires refrigeration. Jones put on 8 witnesses and was supported by 1 other. Bowman called 1 and was supported by 3 others. Johnson called 1 and was supported by 1 other. Red Ball and Herrin were supported by 1 witness.

Three shippers[154] of fresh and frozen meat and food products at Kansas City, Kans., ship in truckload quantities to Atlanta. About 15 truckloads a month are involved. They now use Bilyeu Refrigerated Transport Hirchbach and Jones/Bowman. They have a need for a less-than-truckload refrigerated service and could build up additional business to Atlanta and Birmingham if such service were available. There has been a shortage of refrigerated equipment and very few carriers are willing to accept commodities requiring refrigeration in less-than-truckload quantities.

A witness at Wichita, Kans.,[155] ships about 100,000 pounds a week of beef, mostly hanging meat, and beef byproducts, to Atlanta each week. It uses Bilyeu Refrigerated Transport and Jones as well as equipment of its own when necessary. It is generally satisfied with the present service but would prefer the single-line service offered by Jones.

A witness at Sodyeco, N. C.[156] (near Charlotte), ships about 300,000 pounds a year of dyestuffs in drums to McKinney,

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[154] Witness Nos. 700, 702, 837.

[155] Witness No. 712.

[156] Witness No. 211.

Waco and New Braunfels, Tex. It desires a protective service against freezing from October to May. It now has interline service giving protective service. It has used Roadway without complaint and has available ET&WNC. No need for additional service is shown.

A shipper[157] of foods for human consumption and animal and poultry feeds shipped about 4,000,000 pounds during the first six months of 1966 from Decatur, Ga., to Baton Rouge, Memphis and Mississippi points; from Lakeland, Fla., to Houston and Garland, Tex., and Springfield, Mo.; from Garland, Tex., to Birmingham, and Georgia and Florida points, and from Springfield, Mo., to points in Georgia, North Carolina, Florida, Tennessee and Alabama. It uses rail, various common and contract

motor carriers as well as its own privately owned mechanically refrigerated vehicles. Akers was used exclusively in 1967, and other carriers are available. It has experienced some shortage of equipment when required on short notice.

Two shippers,[158] one at Stilwell and the other at Tahlequah, Okla., ship commodities requiring protection from heat and cold. Nursery stock is shipped from Tahlequah to points in the Southeast. In 1966 about 300,000 pounds moved to Atlanta and about 100,000 pounds to Birmingham. Jones is the origin carrier with such carriers as Ryder, Overnite, Thurston, Gordons and ET&WNC used beyond. About 10,000 pounds of less-than-truckload traffic each year is received from points in Alabama and the Carolinas. About a third of its traffic is handled as an exempt commodity. It desires single-line service. Canned and frozen foods are shipped from Stilwell and Van Buren and Fort

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[157] Witness No. 213.

[158] Witness Nos. 815 and 845.

Smith, Ark., to points in the South, including Atlanta and Birmingham. It uses Jones, Willis Shaw, pool truck, rail and private carriage. A fast refrigerated service would enable shipper to shift its trucks to other areas. It desires a single-line common carrier refrigerated service.

A witness at Dallas[159] ships frozen bakery goods from Dallas to Birmingham, Atlanta and points in Florida and the Carolinas. Two truckloads per week move to Atlanta with a dropoff at Birmingham. One truckload a week goes to the Carolinas and Georgia points and one truckload every 10 to 14 days to Florida points. He uses Refrigerated Transport and also operated four leased units. There is a shortage of equipment and it needs more common carrier service.

A witness at Springfield, Mo.[160] has shipped frozen boxed and hanging meat from Springfield by Campbell Sixty-Six to Birmingham and T.I.M.E. to Atlanta. He has had difficulty in obtaining refrigerated equipment, especially for the hauling of hanging meat, and has therefore lost out on certain government contracts in Alabama and Georgia.

There appears to be some need for additional service by common carriers who are willing to provide adequate and proper mechanically refrigerated equipment, especially for the hauling of shipments in less-than-truckload quantities. Such a showing, however, is insufficient to warrant a grant of general commodities authority.

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Department Store Items

Thirty-one witnesses who ship or receive a wide assortment of items sold by department stores testified in support of all of

[159] Witness No. 358.

[160] Witness No. 714.

the applicants except Floyd & Beasley, Deaton and Baggett. Strickland called 7 witnesses, Jones and Bowman 6 each, Red Ball 4, Roadway and Johnson 3 each and Herrin 2. Some witnesses supported more than one applicant.

Nine witnesses with places of business in Texas[161] ship or receive merchandise to or from points in Arkansas, Louisiana, Texas, Alabama, North Carolina, South Carolina, Georgia, Mississippi, Florida, Tennessee and Virginia. A very large number of shipments are involved weighing on an average of 100 to 600 pounds each. Sears Roebuck & Company is the largest shipper, with 2,000 suppliers. A fast service is needed to meet sale commitments and maintain proper inventories. A reliable service is required so that merchants will know when to expect their merchandise after it has been ordered. Tracing has been difficult when shipments are interlined and in some instances claim service has been poor. Numerous carriers are available and the services of many of the applicants and protestants have been used, some in single-line and some in joint-line service. Some of the service is acknowledged to be satisfactory, but the witnesses support more single-line services and the proposed delivery schedules. In many instances a single or two-line service is available whereas a two-line or three-line service is actually being used. This is brought about by a preference for certain carriers, or by failing to investigate the service available, and in many instances the witnesses did not select the origin carrier or specify the routing. The traffic studies show some good service as well as bad.

A shipper at Dayton, Ohio[162] with a large warehouse in Dallas, ships about 500,000 pounds of general merchandise every four weeks, in truckload and less-than-truckload quanti-

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[161] Witness Nos. 240, 262, 348, 365, 388, 404, 430, 452 and 790.

[162] Witness No. 251.

ties, from various points in Georgia, North Carolina, South Carolina, Tennessee, Alabama, Virginia and Mississippi to Dallas. It requires fast transit time in order to reduce stock inventory. Carriers are required to schedule deliveries and occasionally to hold deliveries for a few days. Sometimes two-line service is used in preference to single-line

in order to reduce the number of carriers at the unloading docks. This procedure will be continued even if the instant applications are granted. It presently is using services of both applicant and protestant carriers.

Three witnesses,[163] with home offices in New York City, ship department store items from points along the Eastern Seaboard to points in Alabama, Arkansas, Kansas, Mississippi, Missouri, Texas, Louisiana and Florida. Shipments for the most part are small, but there are many of them and an expedited service is desired to prevent stocks from running out. A consolidation service is often used to obtain a rate advantage. The existing services of Ryder, Roadway, Herrin, ET&WNC, Gordons, Campbell Sixty-Six, Jack Cole and Johnson have not always been consistent. In some instances the proposed service would merely be a substitution of gateways over those presently used. The home office in New York City is not always solicited by carriers and at times their routing instructions are not followed. There is much service available that has never been used.

Two witnesses from Chicago[164] ship general merchandise in less-than-truckload quantities and are interested in fast single-line service. One receives over a million pounds a year in

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[163] Witness Nos. 342, 644 and 887.

[164] Witness Nos. 492 and 535.

Chicago from Gulf area points such as Mobile, New Orleans, Baton Rouge, Pass Christian, Biloxi, and Brewton, Ala. Outbound shipments from Chicago are small and move to most points in the United States. His receiving facilities in Chicago are very limited and an effort has been made to reduce the number of carriers used. He supports Roadway's application because of that carrier's broad territorial authority and good service to other areas. He also has used the services of Gordons, Ryder, West, Jack Cole, Campbell Sixty-Six and Viking. The second witness moves about 75,000 pounds a month from points in North Carolina, South Carolina, Georgia, Tennessee, Alabama and Mississippi to the Southwest, but primarily Houston. In many instances the transit time has been poor, but the receiving facilities are very poor and at times carriers resort to accumulating shipments to minimize deliveries at those facilities. ETMF, Herrin, Roadway and Ryder participate in this traffic. The unloading delays should be eliminated when the new warehouse is opened soon.

A shipper,[165] with headquarters at Newark, N. J., who controls the routing, ships about 50,000 pounds a year of ironing board pads and cover sets, and other textile goods, from Huntersville, Cornelius, and Charlotte, N. C., to points in Texas. The traffic is now handled primarily by Frederickson Express to Charlotte and from there by Republic Carloading. A few shipments have gone by Johnson as the origin carrier. Bowman has authority to serve Huntersville and Cornelius but has not been used. Roadway has authority to perform single-line service but does not have equipment available for shipments from Huntersville. Numerous joint-line services are available but the shipper wishes to avoid the Memphis, Atlanta and Birmingham gateways. ETMF and Red Ball give satisfactory joint-line services but a fast single-line service is preferred.

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[165] Witness No. 863.

Five witnesses,[166] who receive merchandise at Shreveport, Monroe, Baton Rouge, and New Orleans, La., support certain applicants for service from points in New England and Eastern States as well as Atlanta, Birmingham, and Milledgeville, Ga. Most shipments are in small less-than-truckload quantities except from Milledgeville to New Orleans, which is in truckloads and is handled in joint-line service by Brown and Dixie. The Monroe witness receives about 16,000,000 pounds of traffic each year at his warehouse and from there it is moved outbound to 166 stores in Alabama, Arkansas, Louisiana, Mississippi and Texas. These witnesses consider their transit time unsatisfactory. Many carriers are used in single-line or joint-line service, some of which are Strickland, Thurston, Roadway, Johnson, Red Ball, ET&WNC, Ryder, Overnite, Mason & Dixon, McLean, Bowman, Baggett, T.I.M.E. and others. The shipper at New Orleans receives poor pickup service on traffic to Mobile and Pensacola. Consistency of service is important as special sales require that goods arrive as scheduled. Stores have small inventories and, therefore, must receive shipments on time. A good deal of single-line service is available which witnesses are unaware of and many problems exist because the suppliers disregard routing instructions or routing is left open. The service now provided by numerous carriers appears to be adequate. More and faster service is desired but it is questionable how much of it would be used even if available.

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A witness[167] at Flint, Mich., who receives annually 200,000 pounds from Evergreen, Ala., and 20,000 pounds from New Orleans now uses GHE/Roadway from Evergreen and Strickland/Ellis from New Orleans. He complains of interline de-

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[166] Witness Nos. 70, 256, 573, 615 and 623.
[167] Witness No. 900.

lays and damage. He also knows that there are other two-line services available but prefers single-line service as proposed by Roadway.

Six Arkansas witnesses[168] testified with respect to a need for service from points in Texas, Missouri, Alabama, Georgia, Illinois, Oklahoma, North Carolina, South Carolina, New Jersey, Tennessee and New York City to El Dorado, Little Rock, Bentonville, Springdale, Siloam Springs, Rogers, Fayetteville, Danville, Booneville, Waldron, and Harrison, Ark., and Memphis, Tenn. They have a large number of small less-than-truckload shipments coming from many different points. They all want a fast single-line service if possible but are presently using the joint-line service of such carriers as Red Ball, Atlas, Herrin, ETMF, T.I.M.E., Ryder, Baggett, Gordons, Roadway, ABF, Bowman, Campbell Sixty-Six, Transcon, Jones, GHE, Carolina Freight and others. These witnesses have stores that maintain small inventories and many of them are in small towns so they must order often and receive fast delivery or they will run out of merchandise. Some of the services used are very satisfactory, and others are considered too slow. The witnesses had made very little effort to improve their service through investigation and experimental routing of existing services.

Two witnesses[169] testified concerning a need for service from Atlanta and Birmingham and points beyond to points in Oklahoma, Texas, and Arkansas. The Gibson Products Company at Oklahoma City receives annually about 300,000 pounds in less-than-truckload quantities and 175,000 pounds in truckload quantities from points in Georgia, Alabama, North Carolina, South Carolina and Virginia. It uses Roadway and REA in single-line service and the joint-line services of T.I.M.E., Transcon, Jones, and Western Gillette as delivering carriers, with

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[168] Witness Nos. 324, 415, 778, 779, 809, and 810.

[169] Witness Nos. 768 and 828.

Pilot, GHE, Atlanta Motors, Ryder, Helms, Thurston, Gordons, Overnite, and ET&WNC as origin or intermediate carriers. It does not like Ryder because of its failure to pay a claim. The other witness at Oklahoma City has stores in Texas, Oklahoma and Arkansas. The Oklahoma points are served by Jones. From Atlanta to Oklahoma City, it moves from 500 to 1,500 pounds per week. From

Birmingham to Oklahoma it receives from 4,000 to 5,000 pounds per year. From Georgia points, other than Atlanta, it receives 50,000 pounds a year. From Alabama points, other than Birmingham, 12,000 pounds per year are received. From the Carolinas, over 100,000 pounds are received, all of this traffic moves to the warehouse in Oklahoma City except that shipments over 100 pounds generally move direct to the stores and each store receives several shipments each week from the suppliers. Virtually all of the carriers in the area are used. It complains of delays and unpaid claims. Most of the shipments are routed by the suppliers.

A shipper[170] with a distribution center at York, Pa., supplies 72 percent of the merchandise needed at its 30 stores in Texas, 9 in Mississippi and 5 in Louisiana. Twenty-eight percent of the merchandise is shipped directly from the vendors located in eastern and seaboard States. It operates a large fleet of its own trucks and also uses rail piggyback. Motor common carriers are used for overflow traffic. Vendors usually select the motor carrier used. In some instances joint-line service was used even though single-line service was available. It complained about inconsistency in transit time.

The usual complaints of these 31 shippers are poor pickup, slow transit time, inconsistent service, damage to merchandise,

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[170] Witness No. 917.

and unpaid claims. There is an abundance of transportation available, much of which has never been used. In many instances, a better service is actually available than that which is used. Some witnesses have made little effort to solve their problems and do not actually route the traffic although they have the right to do so. There does not appear to be any need for a grant of additional service for these shippers.

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Building Materials

Fifty-three witnesses supporting eight of the applications testified as to their need for the proposed services in connection with the transportation of various building materials.

(Aluminum Products)

Seventeen of these witnesses ship or receive aluminum products used in the building industry. Jones called 7, Roadway and Bowman 4 each, and Red Ball and Herrin 1 each; Johnson was supported by 2, Jones by 2 and Bowman and Baggett by 1.

Five of these witnesses[171] ship or receive aluminum doors, windows, frames, extrusions, and related items in both truckload and less-than truckload quantities. Shipments originating at Atlanta or Birmingham, or points beyond, and destined to Jackson, Miss., generally are delivered by such carriers as Deaton, West, Campbell Sixty-Six, Dixie, Gordons and Viking. The witness does not route these shipments and there are many different origin carriers used. From Atlanta and Birmingham to Fort Smith, Gordons and Campbell Sixty-Six are generally used, and at times a joint-line service with Mercury Motors as delivering carrier out of Memphis is employed. For shipments from At-

[171] Witness Nos. 591, 735, 785, 827 and 848.

lanta, Newnan, and Moultrie, Ga., to Tulsa, Oklahoma City, and Fayetteville, either T.I.M.E. or Transcon are used out of Atlanta, with a local service from Newnan and Moultrie. Campbell Sixty-Six also has a single-line service available to Tulsa which is sometimes used. These witnesses complain of slow transit time which may delay construction work. A good deal of two-line service is available, but shippers prefer single-line service to avoid delays and the transfer of lading which tends to increase damage.

A shipper at Jonesboro, Ga., and a receiver at Baton Rouge[172] use the services of Ryder for the transportation of architectural aluminum extrusions from Jonesboro to Baton Rouge. The receiver at Baton Rouge has had difficulty in tracing shipments handled by Ryder. The services of Gordons and Deaton are available

but have not been used because neither customer nor sales department requested it. The company prefers its traffic not be transloaded enroute and desires that shipments move to destination on same vehicle as loaded at its plant.

Two shippers at Birmingham[173] ship to points in Missouri, Kansas, Arkansas, Mississippi, Louisiana, Illinois, Texas, and Oklahoma. The transportation services of ETMF, Campbell Sixty-Six and Gordons are used to Arkansas; to Missouri they use Gordons and Campbell Sixty-Six; to Louisiana they use ETMF and Ryder; to Mississippi Campbell Sixty-Six and West are used; ETMF, Mercury Freight and Gordons are used to Texas; Gordons, Campbell Sixty-Six, and Terminal Transport are used to Illinois; and Transcon is used to Oklahoma. These

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[172] Witness Nos. 43 and 44.

[173] Witness Nos. 81 and 83.

shippers complain of poor pickup service and occasional split delivery. Other motor carrier service is also available.

Shippers at Rome, N. Y.,[174] and Baltimore, with a new plant at Scottsboro, Ala., ship from Rome and Baltimore to New Orleans, Baton Rouge, Chalmette, and Metairie, La., and Mobile, Ala. Over a million pounds are shipped annually in both truckload and less-than-truckload quantities. It uses Roadway, Johnson, and Akers as origin carriers in single-line service where possible, and in connection with other carriers for joint-line service where necessary. The new plant at Scottsboro will serve points in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. At the time of the hearing, 400,000 pounds a month were being shipped to this area from plants at Baltimore and Chicago. This volume will increase with opening of the new plant. Bee Line, A-OK, Bowman, Ryder, Hall, and Parrish Dray Line presently serve Scottsboro and shipper is supporting 14 other applicants to serve the new plant. A large amount of traffic is to be moved, and single-line service is desired to meet competition.

Three witnesses at Dallas[175] ship aluminum articles from Dallas to Atlanta, Birmingham, Montgomery, Greensboro, N. C., Greenville, S. C., and Jackson, Miss. One shipper has an outbound movement of 2,000 pounds per month to Atlanta and also receives inbound 2,000 pounds a month from Atlanta. ETMF is used on this traffic. Transcon, Mercury Freight, Roadway, Gordons, Red Ball, and Braswell

are used to other points and the services of additional carriers are also available. Poor pickup and slow transit time is the common complaint.

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[174] Witness Nos. 263, 908.

[175] Witness Nos. 291, 312 and 474.

A witness at Baton Rouge[176] supporting the Roadway application receives shipments from Akron, Canton, Niles, and Youngstown, Ohio, western Pennsylvania, Chicago, and St. Louis. Shipments from the Roadway area average 12 to 15 per month, ranging in weight from 300 to 14,000 pounds each. Gordon's single-line service from Chicago and St. Louis is excellent, and it wants single-line service from the other origin points. It has used the services of Campbell Sixty-Six, Herrin, Ryder, and Red Ball as delivering carriers, but service is not satisfactory when interchange of lading is involved.

Two witnesses[177] at Oklahoma City and Muskogee, Okla., ship about 10,000 pounds per month from Oklahoma City to points in Alabama and Georgia. The services of Transcon, T.I.M.E. and Jones are used. T.I.M.E. has authority to serve many of these points direct, but actually interlines many of the shipments. About two shipments a month, weighing 800 pounds each, move from Birmingham to Muskogee. One witness who formerly used the joint-line service of Gordons and Jones over the Memphis gateway now uses that of ETMF and Jones over the Dallas gateway. Single-line service is desired.

(Wallboard)

Eight of these witnesses ship or receive wallboard and related items. Red Ball called 3 witnesses, Herrin and Bowman 2 each, and Roadway 1. Two of these witnesses also support Johnson, 1 supports Strickland and 1 supports Red Ball.

Two witnesses at Atlanta[178] ship over 15,000 pounds a day of wallboard and adhesives to points in Louisiana, Mississippi

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[176] Witness No. 613.

[177] Witness Nos. 753 and 762.

[178] Witness Nos. 46 and 47.

and Texas using such carriers as Johnson, Overnite, Ryder, and Dixie. Dallas, Forth Worth and Houston receive a total of six shipments a month. ETMF and Herrin are also used on some of this traffic. Direct service to all points is desired in order to speed up transit time and avoid transfer of lading.

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A witness at Grand Prairie, Tex.,[179] ships three or four times a month to Atlanta and receives approximately two shipments a month from a warehouse in Atlanta. ETMF has performed this service but has been slow on some shipments. Traffic to Birmingham moves by Mercury Freight, and Red Ball has been the origin carrier on shipments to Greenville, Miss. Time in transit is important because contractors are usually in a hurry for the material. Other services, both single-line and joint-line are available.

A witness at Alexandria, La.,[180] ships about 250,000 pounds a month of wallboard, metal moulding, chalkboards, bulletin boards, chairmats, clipboards, and adhesive to Atlanta and Birmingham and points beyond in the Southeast. Red Ball's interline service has been good, but shipper would like it to have authority to provide single-line service. It is not aware of some existing services and is using two and three-line service to some points where single-line is available.

A shipper at Nashua, N. H.,[181] ships asbestos wallboard, asbestos lumber, and insulating material to Baton Rouge, New Orleans, Marrero, Westwego, Harvey, and Chalmette, La., Mobile, Pensacola, and Biloxi and Pascagoula, Miss. It normally

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[179] Witness No. 437.

[180] Witness No. 610.

[181] Witness No. 41.

makes from 10 to 15 shipments weekly, weighing from 500 to 20,000 pounds each. The traffic moves from Nashua to Boston by a feeder-line for interline beyond. It has used Strickland, Carolina, and Johnson. Strickland will not give the connecting carrier from Nashua to Boston a trailer and Johnson does not always have one available. It now has single-line service from Boston to all points except Baton Rouge. There is also some service available which it has not tried. It is interested in faster service.

With respect to the two witnesses from Dallas,[182] one receives wallboard and caulking compound from Trenton, Sayreville, and Clifton, N. J., and Baltimore. Two or three shipments per month, weighing from 1,000 to 5,000 pounds each, are received using Roadway or the joint-line service of Spector/ETMF. This service has been slow. He supports the Bowman and Johnson applications

but has never tried their joint-line services. The other witness ships paint and wallboard. About 75,000 pounds of paint moves each month from Dallas to Greenville, Miss. From Greenville it ships approximately 400,000 pounds per month to Dallas, Houston, Tyler, Longview, Waco, Beaumont, and Wichita Falls, Tex., and New Orleans, Baton Rouge, Shreveport, Alexandria, Lafayette, and Monroe, La. It uses Jones primarily betwen Dallas and Greenville. Campbell Sixty-Six and Gordons are used from Greenville to points in Louisiana. Deaton is used in truckload shipments to points in Texas and Louisiana. Other carriers are available, but it desires more single-line service.

A manufacturer[183] who ships wallboard and ceiling tile from Meridian, Miss., requires open-top or converta van equipment

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[182] Witness Nos. 229 and 356.

[183] Witness No. 677.

for its more than 30 truckload shipments per week to points in Alabama, Georgia, and the Carolinas. It now uses Deaton, Dixie, West, Campbell Sixty-Six, and Gordons. Its own vehicles are used in many instances in order to make stopoffs and jobsite deliveries. It wants a single-line, overnight service so that it can discontinue using its own vehicles.

(Doors, Screens, and Windows)

Nine of these witnesses ship or receive doors, screens, windows, and related items. Bowman called 3 witnesses, Jones 2, and Strickland, Herrin, Baggett, and Red Ball 1 each. One witness also supported Johnson.

Three witnesses at Dallas, Garland, and Jasper, Tex.,[184] ship to points in Alabama, Georgia, Florida, Mississippi, and the Carolinas. From Jasper, truckload shipments are usually made in the shipper's own vehicles. Less-than-truckload shipments, averaging about 246 pounds, move by common carrier and Red Ball is the origin carrier. The witness desires single-line service. From Dallas, less-than-truckload shipments, weighing from 100 pounds to 5,000 pounds, move to Birmingham, Mobile, Atlanta, and Jackson, Miss. This shipper presently uses Gordons, Red Ball, Roadway, and Braswell. It complains of poor pickup service and slow transit time. Other services are available. From Garland, about 10 shipments a week, weighing from 500 to

1,000 pounds each, are made to points in Georgia, Alabama, Florida, North Carolina, and South Carolina. Large shipments are made by rail. The Garland witness presently uses Roadway and ETMF as origin carriers. He prefers single-line service, but is unfamiliar with existing services.

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[184] Witness Nos. 7, 305, and 319.

A shipper at Birmingham and a receiver at Muskogee, Okla.,[185] complain of slow service. Mercury and ETMF are used from Birmingham to Houston and Dallas. To Muskogee, the traffic moves by Transcon/Rocket, Jack Cole/Jones and ETMF/Jones. About 90,000 pounds a month are involved. Other motor carrier service is available which has not been tried.

A witness at Jackson, Miss.,[186] receives overhead doors, tracks, springs, steel channels, molding, iron pipe, and other installation items from Dallas. It receives from 20 to 30 less-than-truckload shipments per month, weighing from 250 to 1,800 pounds each. Red Ball is being used as the origin carrier. This service is all right but a little slow. Some shipments are also made from Dallas to Greenville, Meridian, and Gulfport, Miss. The witness was not familiar with the single-line service of Jones from Dallas to Greenville.

A shipper at Laurel, Miss.,[187] ships to points in Georgia, Virginia, and the Carolinas. Insofar as here pertinent, it uses rail, motor carrier, and piggyback service. It presently uses Bowman, West, Viking, and Roadway. It will not use Ryder because this carrier would not promise not to shift freight from one trailer to another. It needs single-line service to Atlanta for interchange with other carriers. It also receives large shipments inbound from New York, New Jersey, New Hampshire, Virginia, and North Carolina.

A shipper at New Orleans[188] ships metal doors and door frames to points in Alabama and Tennessee. Its origin carriers are Campbell Sixty-Six, Dixie, Deaton, Ryder, Viking, and

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[185] Witness Nos. 159 and 798.

[186] Witness No. 543.

[187] Witness No. 932.

[188] Witness No. 547.

Railway Express. It complains of poor pickup service and desires single-line carriers to avoid transfer of materials.

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A receiver at Hiwasse, Ark.,[189] receives about eight less-than-truckload shipments a month from Atlanta and Hialeah, Fla. ETMF, Campbell Sixty-Six, and Ryder have been used as origin carriers with Jones, who serves Hiwasse daily, making the deliveries. Other carriers are available which have not been tried. It has no real complaint concerning the present service but is always looking for something better.

(Tile)

Three of these witnesses ship or receive tile.[190] One shipping from Pensacola, Fla., supports the Roadway application. He ships monthly 800,000 pounds to Illinois, 1,000,000 pounds to Wisconsin, 600,000 pounds to Michigan, 1,500,000 pounds to Indiana, and 900,000 pounds to Ohio. Mercury Freight is one of the origin carriers, with interchange at Birmingham. GFA is the other origin carrier, with interchange at Atlanta. Dixie, Roadway, Alabama Highway, Ryder and others are used as connecting carriers. Roadway, as well as other carriers, has not always been able to furnish equipment at interchange points. There is no explanation as to how or why the additional equipment would be available when needed at Pensacola. A witness at Cleveland, Miss., supporting Jones ships two truckloads weekly to Atlanta and one truckload monthly to Birmingham. There are also some less-than-truckload shipments to both cities. Private carriage is used for most of the truckload shipments. Gordons, Malone, Roadway, ET&WNC, and F&W are used on less-than-truckload shipments. The witness at

[189] Witness No. 834.

[190] Witness Nos. 50, 552, and 701.

Kansas City, Kans., also supports Jones and receives four or five truckloads per month from Florence, Ala. It presently uses ET&WNC/Jones, with interchange at Memphis. It complained of slow service but it has other carriers available.

(Building Materials)

Sixteen of these witnesses testified with respect to a need for transportation of various building materials. Roadway called 4 witnesses, Jones and Strickland 3 each, Red Ball and Bowman 2 each, and Herrin and Johnson 1 each. Some witnesses supported more than one applicant.

Three witnesses from Baton Rouge and one from New Orleans receive many less-than-truckload shipments from various points in Alabama, Georgia, New York, Pennsylvania, Ohio, South Carolina, New Jersey, Connecticut, Michigan, Kentucky, and Illinois; and a witness from Atlanta ships to Louisiana, Texas, Oklahoma, and Missouri.[191] The latter also directs some of the shipments from New York and New Jersey origins to Dallas, Houston, and Atlanta. The services of over 30 motor common carriers are used, including most of the applicants. The common complaints against these existing services are slow and inconsistent service, damage to lading, poor claim service and poor tracing. The supporting witnesses expressed a desire for the proposed faster single-line service of the respective applicants they support.

A shipper at Conley, Ga. (near Atlanta), and receivers at Jackson, Miss., and Pineville, La.,[192] are concerned with the movement of less-than-truckload traffic from Atlanta to Hatties-

[191] Witness Nos. 87, 441, 555, 612, and 614.

[192] Witness Nos. 18, 116, and 766.

burg, McComb, Jackson, and Meridian, Miss., Pineville and Dallas. Deaton, Gordons, Dixie, Ryder, Jack Cole, GHE, and West are used to Mississippi points. Private carriage is used on about 50 percent of the movements to Dallas and on inbound shipments from Houston. Shipments are also made from Birmingham and Selma, Ala., to Pineville where Red Ball is the delivering carrier. The complaint is slow service with the desire for a dependable, consistent, single-line service.

A shipper at Monroe, Ohio[193] ships about 800,000 pounds a year in less-than-truckload quantities to points in southern Alabama, western Florida, Louisiana, and southern Mississippi. Roadway is the origin carrier connecting with Red Ball, Herrin, West, GFA, and Mercury Freight. It prefers single-line service because less handling and less tracing is involved.

A shipper at McGregor, Tex.,[194] averages about 200 truckload and less-than-truckload shipments per month to points in Arkansas, Louisiana, Mississippi, Alabama, Tennessee, Georgia, Florida, and the Carolinas. Less-than-truckload inbound shipments are received from Atlanta, Vicksburg, and Magnolia, Ark. Central Freight Lines serves the company's plant at McGregor, interlining the freight with Red Ball, Transcon, Southwestern, ETMF, and Ryder. The complaint is slow service. Private carriage is used to a certain extent and even the proposed service of the applicant supported would be joint line.

A witness at Birmingham[195] ships less-than-truckload to points in Arkansas, Louisiana, Missouri, Mississippi, Kansas, Texas, Tennessee, Alabama, and Florida. It presently uses such

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193 Witness No. 334.

194 Witness No. 529.

195 Witness No. 551.

carriers as Campbell Sixty-Six, Deaton, Mercury Freight, ETMF, Gordons, Ryder, Baggett, Jack Cole, Howard Hall, A-OK, West, and Greyhound bus. It complains of delayed pickups and slow transit time. It knows of other carriers which it has not used, but believes that the proposed schedules of Jones and Bowman would be helpful.

A shipper at Kansas City, Mo.,[196] ships approximately 45,000 pounds a week in less-than-truckload quantities to points in the southeastern United States. The principal origin carriers are Watson-Wilson, Byers, Roadway, Toedebusch, Jones, Western Gillette, T.I.M.E., Campbell Sixty-Six, and Transcon. The delivering carriers used are Roadway, Service Line, Alabama Highway Express, Watson-Wilson, Bowman, Ryder, Central, Baggett, Viking, Robertson, Thurston, Lewisburg Transfer, ET&WNC, Mid-South, and Transcon. The complaint is slow transit time and some refusal of shipments at interchange points.

A witness at Houston[197] ships about 17,000 pounds a month of window glass to points in Alabama, Georgia, Virginia, and the Carolinas. It presently uses Roadway to Atlanta and Mercury Freight to Birmingham. Red Ball, Ryder, and other carriers are also used. It complains of breakage and desires a fast, single-line service which offers less handling of merchandise.

A witness at Tulsa, Okla.,[198] receives about 9,000 pounds a month from Newnan, Ga., and Tuscumbia, Ala. From Newnan it uses the joint-line services of Pike/Transcon. It has used T.I.M.E., but discontinued that service because of slow transit time and damage to lading. From Tuscumbia it uses ET&WNC connecting with Jones. It has not tried to use Jones in two-line service out of the Atlanta area or to use Western Gillette in two-line service.

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[196] Witness No. 707.

[197] Witness No. 747.

[198] Witness No. 757.

A receiver at Fort Smith, Ark.,[199] receives every two to six weeks about 5,000 pounds from Tifton, Ga., and 1,000 pounds from Conyers, Ga. It would like to obtain 4,000 pounds of truss plates from Miami, Fla., every two weeks, but has been unable to obtain satisfactory

transportation. It is presently using GHE, Gordons, T.I.M.E., Mercury Freight, Owens, Campbell Sixty-Six, and Carolina. There are many more services available which it has not tried.

A witness at Pensacola, Fla.,[200] receives 30,000 to 40,000 pounds monthly from Cincinnati, 48,000 pounds a month from New Britain, Conn., and about 5,000 pounds a month from upper New York. From Cincinnati, it presently uses Dixie Ohio in connection with Mercury Freight. From New Britain and New York it uses Johnson single line or Roadway with GFA or MR&R as delivering carriers. It complains of slow service and desires single-line service. Several carriers are available which it has not tried.

There is a desire for the proposed single-line service and schedules offered by applicants. Most of these shippers have common carrier service available that they have not tried, and in many instances no real effort has been made to determine the extent of existing services. Present services should be tried before additional authority is granted.

Machinery and Parts

Thirty-six witnesses testified with respect to their need for the transportation of machinery and parts. All applications were supported except Deaton and Floyd & Beasley. Bowman

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[199] Witness No. 840.

[200] Witness No. 898.

called 10 witnesses, Red Ball 9, Roadway 7, Herrin and Baggett 3 each, Strickland 2, and Johnson and Jones 1 each. Johnson was supported by 5 witnesses and Bowman, Roadway, Herrin and Jones by 1 each.

Six of the witnesses testified of their need for service in the transportation of cotton gin machinery and related parts.[201] Four of them require service from Columbus, Ga., and Prattville, Ala., to Dallas; and one of these also receives parts and supplies from Birmingham, Atlanta, Augusta, Asheville, Greensboro, and High Point. The latter witness also ships outbound from Dallas to various points in Georgia and the Carolinas. Truckload shipments from Columbus to Dallas move by Eagle Motor Lines and Superior. From Prattville private carriage is used for the truckload shipments. Less-than-truckload shipments between Dallas and Columbus move by Roadway in direct service or with Baggett and Jack Cole as origin carriers with ETMF and Herrin as delivering carriers.

Between Dallas and Georgia and Carolina points the single-line services of Roadway, ETMF, Mercury Freight, Transcon, and Gordons, as well as the joint-line services of those carriers and their connecting carriers are used. They complain of slow transit time. Another shipper at Dallas makes approximately 15 shipments a month, weighing from 300 to 2,000 pounds each, to Atlanta during the ginning season. It is presently using ETMF, Gordons, Roadway, and Mercury United. It believes there are about six single-line services from Dallas to Atlanta and freight is generally divided among the existing services. The sixth witness makes both truckload and less-than-truckload shipments from Sherman, Tex., to Atlanta, Birmingham, and Greenville, Miss. He uses the services of Red Ball,

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[201] Witness Nos. 199, 249, 287, 484, 566, and 672.

Central, Gordons, J. H. Rose, C&H Transportation, and Jeffries Eaves. Some difficulties have been experienced with tracing shipments. The main complaint is slow transit time and lack of single-line service to all points. Plenty of joint-line service is available.

A shipper at Birmingham[202] ships machinery parts in less-than-truckload quantities to Houston, Beaumont, Dallas, Fort Worth, and Texas City, Tex. It uses the single-line services of Mercury and ETMF to the Houston and Dallas areas, and those carriers and Baggett with connecting carriers to other points. Approximately 10,000 pounds moved outbound to points in Texas in April and May of 1966 and about the same amount moved from points in Texas back to Birmingham. It complains that the motor carrier service is not consistent.

A witness at Columbus, Ohio, and one at Belton, S. C., testified as to their need for service.[203] One ships from Belton to points in Mississippi, Arkansas, Louisiana, Texas, Kansas, and Missouri. It presently uses ET&WNC to Arkansas points, G&P Watson-Wilson to points in Missouri and Kansas, Ryder, Roadway or Overnite Transcon to Texas, Johnson or Ryder to Louisiana, and Bowman or Ryder to points in Mississippi. It complains of slow service. The other witness ships from Columbus and Delaware, Ohio, Belton and Woodruff, S. C., and Morristown, Tenn., to the Alabama, Florida, Mississippi, and Louisiana points Roadway proposes to serve. It uses such carriers as Viking, ABF, Jack Cole, Ryder, Johnson, Bowman, ET&WNC, M&D, Robinson and their connecting carriers. It complains of slow service. There is plenty of joint-line service available but it desires a faster single-line service.

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202 Witness No. 74.

203 Witness Nos. 78 and 439.

Five witnesses at Houston, Graham, Winnsboro, and Pittsburg, Tex.,[204] ship in less-than-truckload quantities to points in Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, Pennsylvania, New Jersey, New York, and Massachusetts. A large number of carriers are used. Red Ball is the only motor carrier serving Winnsboro and it is also used at Graham and Pittsburg, with open routing of the shipment beyond the origin carrier. Other carriers used in single-line or joint-line service include ETMF, Roadway, Bowman, Southwestern, Transcon, Braswell, Ryder, Lee Way, Consolidated, Herrin, Dixie, Strickland, Yellow Transit, and Mercury Freight. These shippers want a fast single-line service, but in some instances they are using a two and three-line service where a single-line or two-line service is now available. Some shippers have limited dock facilities and therefore use only certain carriers even though better service is available by other carriers.

A witness from Vicksburg[205] receives about 40 less-than-truckload shipments per year from High Point, Charlotte, and Statesville, N. C., Atlanta, and Jonesboro, Ga., and Baltimore. He uses Shamrock, Byrd, and Ryder in single-line service with Jack Cole, Red Ball, Bowman, West, Deaton, GFA, and Shippers Express in joint-line service. Although reasonably satisfied with his service, he wants a faster service with carriers having terminals in Vicksburg.

A witness at Providence, R. I.,[206] ships 30,000 pounds a month in less-than-truckload quantities to Mobile and points in Louisiana, Mississippi, and the Florida Panhandle. He has used such carriers as Roadway, Johnson, Akers, Ryder, GFA, Baggett, Herrin and Red Ball. He is aware of at least 10 carriers including Roadway that operate single-line service from

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[204] Witness Nos. 270, 277, 377, 499, and 513.

[205] Witness No. 773.

[206] Witness No. 890.

Providence to Atlanta. Johnson provides single-line service to New Orleans. He wants a faster single-line service to all points.

Four receivers at Dallas, San Antonio, Bonham, and Tyler, Tex.,[207] receive shipments from Atlanta and Commerce, Ga., Birmingham, Mobile, and Montgomery, Ala. The receiver at San Antonio averages three truckloads a month from Atlanta. The supplier routes the traffic and uses Roadway. He is not familiar with other services which are available. The witness at Bonham

receives less-than-truckload shipments from Atlanta as well as Greenville, S. C., Charlotte, N. C., Monticello and West Point, Ga. He is served by Red Ball, Central, and Roadway. The first two have terminals there. Other carriers used are Ryder, Jack Cole, Gordons and Mercury. The receiver at Tyler receives three small shipments a month from Atlanta and 10 to 15 shipments a month from Commerce weighing from 152 to 1,520 pounds. It uses a joint-line service with Southwestern, Red Ball, and ETMF making the deliveries. The witness at Dallas receives shipments each week weighing from 1,000 to 10,000 pounds from Birmingham, Mobile, Montgomery, and Atlanta. He is using Mercury Freight, Transcon, and Roadway. The general complaint is slow service and poor tracing but they continue to use two and three-line carriers when more direct service is available.

Twe witnesses from Baton Rouge[208] receive less-than-truckload shipments from Atlanta, Birmingham, Elyria, and Cleveland, Ohio, Holyoke, Mass., and points in New York, Pennsylvania, New Jersey, and Virginia. From Atlanta it uses Ryder single-line and Johnson/Red Ball joint-line. From Birmingham

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[207] Witness Nos. 309, 341, 531, and 749.

[208] Witness Nos. 449 and 473.

it uses Campbell Sixty-Six. From Ohio points it uses Roadway/Gordons. From Massachusetts it uses McLean and its connecting carriers. From other points it uses a variety of joint-line service over the New Orleans, Memphis, Nashville, and Jackson gateways with Braswell, Red Ball, Saia, Gordons and Herrin as delivering carriers. It also uses Acme Fast Freight from New York. The complaint is slow transit time and damage to shipments. Generally shippers fail to honor routings specified by these witnesses.

A manufacturer at Watertown, Mass.,[209] ships about 30,000 pounds a month to points proposed to be served by Roadway. Shipments average about 5,000 pounds and are blocked and braced in trailers for shipment. Interchange of freight enroute is difficult. It uses Johnson on shipments to New Orleans. It also uses Roadway and freight forwarders. It takes approximately four months to manufacture this equipment. It is manufactured after the order is taken so there is a four-month delay to begin with. Every day of delay in shipment is very important to the customer.

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Two shippers at Easley, S. C., and Gastonia, N. C.,[210] ship to points in Texas, Louisiana, and Mississippi. From Easley to Texas points about 100,000 pounds moves each year with shipments ranging from 15,000 to 35,000 pounds each. Carriers used are Thurston over Memphis in care of Missouri-Pacific Truck Line. It has also used Ryder and ET&WNC. From Gastonia about 15 million pounds a year move to points in Louisiana, Mississippi, and Texas. Piggyback service and a large number of motor carriers are used such as Thurston, Akers, Roadway, Deaton, T.I.M.E., Viking, Jack Cole, Robert-

[209] Witness No. 333.

[210] Witness Nos. 79 and 528.

son, Red Ball, Dixie Highway, Shippers Express and others. These witnesses would like a faster service.

A shipper at Atlanta[211] ships about 5,000 pounds a week to points in Mississippi, Arkansas, Louisiana, and east Texas. It uses Dixie Highway, Baggett, Bowman, T.I.M.E. and Jack Cole as origin carriers. It complains of slow service and tracing problems. Ryder has provided poor pickup service. It would like a direct single-line service.

A receiver at Houston[212] receives shipments in less-than-truckload quantities from such diverse points as Atlanta and Augusta, Ga., Somerville, Mass., Nashville, and Springfield, Tenn., Oakes and West Chester, Pa., and North Bergen, and Newark, N. J. It uses Acme and Universal Carloading and such motor carriers as Ryder, Red Ball, T.I.M.E., Akers, Roadway, Strickland, ETMF, Bowman, and others. It complains of poor service citing slow transit time and tracing problems, but has made no real effort to route the traffic except from Augusta where it uses Bowman/ETMF. It believes a single-line service would be a big improvement.

A shipper at Greenville, Ala.,[213] ships outbound and receives inbound about 100,000 to 300,000 pounds per month. About 30 percent of the shipments are truckload and 70 percent are less-than-truckload. Carriers presently serving Greenville are A-OK, Caton, Ward, and Baggett. It supports Roadway in order to obtain more direct single-line service. It believes that interchange causes delay. Roadway has not promised a

terminal at Greenville, and the witness does not know how Roadway proposes to handle the traffic.

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[211] Witness No. 100.

[212] Witness No. 516.

[213] Witness No. 141.

A witness from Mobile[214] receives 15 to 20 shipments annually ranging from 60 pounds to 4,000 pounds from scattered points in the Midwest and the East Coast. He presently uses such motor carriers as Jack Cole, Mercury Freight, Bowman, GFA, Johnson, Caton, Central Motors, and Gordons. Mercury Freight has given very good service, but he is seeking more single-line service because he believes that interchange causes delays.

A witness at Miami, Fla.,[215] has three or four shipments a week moving between Miami, on the one hand, and, Dallas and Houston on the other. On outbound traffic he uses Bowman and its connections and is satisfied with this service. Inbound shipments are delivered by Ryder, Central, and Bowman. This service has not been good but he has little control over selection of these carriers. Shippers do not follow his suggestions. Ryder's pickup service was bad and he has not used this carrier on outbound shipments in the last two or three years.

A shipper at Denver[216] ships a total of 64,000 pounds monthly to Birmingham and Atlanta. It uses Watson-Wilson single line to Atlanta through St. Louis, or the Kansas City gateways. It also uses the joint-line services of IML/Gordons through Kansas City, Lee Way/Transcon through Oklahoma City and Red Ball/ETMF through Memphis. It complains of slow transit time, inconsistent service, and no single-line service to Birmingham. Other services are available.

Two shippers at Topeka, Kans.,[217] ship in less-than-truckload quantities to points in Virginia, North Carolina, South Carolina, Georgia, Tennessee, Alabama, and Florida. These

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[214] Witness No. 868.

[215] Witness No. 169.

[216] Witness No. 438.

[217] Witness Nos. 716 and 717.

shippers use Capitol Truck Lines, Inc., and Yellow Transit as origin carriers. Delivering carriers are Baggett, Georgia Highway, Roadway and Campbell Sixty-Six. The complaint is that the shipments are too long in transit and they therefore prefer a single-line service.

A shipper at Pueblo, Colo.,[218] during 1966 shipped 90,000 pounds to Atlanta and 8,000 pounds to Birmingham. Yellow Transit provides a single-line service to Atlanta. Other carriers used are Red Ball, Navajo, D. C., and REA. It complains of slow transit time and would prefer more single-line service.

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A witness at Rector, Ark.,[219] ships in less-than-truckload quantities to Atlanta and Marietta, Ga., and Birmingham. Jones is the origin carrier at Rector and the routing beyond is left open. It also receives inbound shipments from Atlanta by use of Transcon Jones. It believes that single-line service would improve transit time.

A witness at Muskegon, Mich.,[220] ships in truckload and less-than-truckload quantities to Mobile. Occasionally shipments are also made from Grand Rapids and Lansing, Mich. Jack Cole and Gordons have been delivering carriers. It desires single-line service and none is available from Muskegon. A lot of joint-line service is available which it has not used.

These witnesses for the most part complain about the service they are receiving from the carriers they are presently using. They prefer the faster single-line schedules proposed by the applicants. Much of the joint-line service presently used is per-

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[218] Witness No. 721

[219] Witness No. 723.

[220] Witness No. 909.

formed by the applicants herein. There are also many carriers offering a service which has never been tried. No need has been shown which would warrant a grant of additional authority.

Electrical Supplies, Appliances, and Parts

Fifty-one witnesses who ship or receive electrical supplies testified in the aggregate, in support of all of the applicants except Floyd & Beasley. Strickland called 11 witnesses; Johnson and Roadway 8 each; Red Ball 7; Bowman 6; Herrin 4; Baggett and Deaton 3 each; and Jones 1. Some witnesses supported more than one applicant.

Eleven of these witnesses[221] ship in both truckload and less-than-truckload quantities from Atlanta, Chamblee, Conyers, and Rome, Ga., to points in Alabama, Arkansas, Louisiana, Mississippi, and Texas. Shipments of storage batteries from Conyers, ranging from 1,400 pounds to 42,000 pounds, move by Owens, a local carrier, to Atlanta for interchange with Deaton, Ryder, Johnson, and Jack Cole for delivery to points in Mississippi and Louisiana. The Conyers shipper desires single-line service and complains of poor pickups on Saturdays.

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During a 3-month period, the Rome shipper used Bell, C&H, and Southern Railway to move 122,000 pounds of transformers and switches to Houston and Dallas. It prefers single-line service but does not use the existing single-line service of Roadway and Ryder because "they do not provide the type of service he requires." Shipments weighing from 50 pounds to 20,000 pounds move from Chamblee (Atlanta) to points in Louisiana, Texas, and Mississippi. Transcon is used to Dallas and Ryder to Jack-

[221] Witness Nos. 22, 93, 101, 122, 137, 151, 158, 202, 451, 620, and 621.

son, Monroe, Shreveport, and Baton Rouge. The Chamblee shipper complains that the Transcon service is slow and that Ryder does not pick up on the day requested. It also ships by Baggett as origin carrier with open routing beyond. Services of other carriers are available. Atlanta shippers ship primarily in less-than-truckload quantities and use Johnson to New Orleans and its connecting carriers to other Louisiana points; also Ryder's single-line service, as well as REA and bus service. To Mississippi points they use such carriers as Red Ball, Dixie, ETMF, GFA, West, ET&WNC, Braswell, and Ryder, either in single-line or joint-line service. Much of the Texas traffic is sent by Transcon, Roadway, T.I.M.E., Gordons, ETMF, Ryder, and Mercury Freight. Often the single-line services available are not used by these shippers. The most common complaint is slow transit time. The shippers also complain about poor pickup service by Ryder and, occasionally, by Jack Cole and Johnson. These shippers all want single-line service and more carriers, even though they have not used all of the service presently available. There is no shortage of joint-line service and most of it is very good.

A shipper at Syracuse, N. Y.,[222] ships about 400,000 pounds a year in small shipments, averaging 300 pounds each to New Orleans, Baton Rouge, and Mobile. No single-line service is available, so it uses Roadway to Memphis or Birmingham with open routing beyond. It complains of slow deliveries and tracing problems, and believes that a single-line service will improve the situation. There are other carriers available.

Four witnesses at New Orleans and Shreveport, La.,[223] ship primarily to Pensacola, Atlanta, Columbus, Birmingham, Montgomery, Mobile, and other points in the South. From New Orleans to Pensacola, they use Johnson's single-line service, but

[222] Witness No. 260.

[223] Witness Nos. 190, 540, 606, and 748.

it has not been dependable nor able to take all of the traffic offered. West interchanges such freight at Mobile with Cooper, GFA, or MR&R.

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Pickup service has been poor. To Atlanta, Columbus, Birmingham, Mobile, Montgomery, and other southern points, such carriers as Ryder, Dixie, Jack Cole, Herrin, West, Central, Baggett, Red Ball, and Johnson are used. There are some inbound shipments to the Atlanta area from points in Florida, Michigan, South Carolina, New York, and Connecticut. Shipments from Shreveport are made to and through Atlanta and Birmingham. ETMF and Ryder offer single-line service to some points in this area but are not used. Red Ball is used with Jack Cole and Central as connecting carriers. The services of other carriers are also available.

Two witnesses at Pittsburgh, Pa.,[224] ship electrical transformers and component parts in both truckload and less-than-truckload quantities from Pittsburgh and Gadsden, Ala., to points in Arkansas, Louisiana, Kansas, Mississippi, Missouri, and Texas. Gadsden is the primary shipping point for this area. Open-top trailers with high sides are needed. They have used such carriers as B&G Express, Superior, Wilson, Viking, Roadway, Herrin, Tower, Overnite, West, Campbell Sixty-Six, Bowman, Deaton, Gordons, and Mercury Freight. Baggett has been used out of Gadsden to Georgia points but not to New Orleans. B&G Express, domiciled at Gadsden, is used extensively as the origin carrier. Bowman serves Gadsden but has not been used for Birmingham connections. Roadway also serves Gadsden, although the witness was not familiar with the extent of its service. They complain of tracing difficulties with connecting carriers and damage to freight. They desire a single-line service, and propose to divert freight to Bowman if its application is granted.

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[224] Witness Nos. 301 and 886.

A shipper at Fayetteville, Ark.,[225] ships a total of 4,000 pounds a week to Atlanta and Birmingham. An occasional shipment is made to Greenville, Miss., by Jones as origin carrier in a two- or three-line service. To Atlanta, it uses Jones Ryder over the Memphis gateway. To Birmingham, it uses Campbell Sixty-Six in single-line service. It has recently started to use Red Ball as an origin carrier. It desires more carriers with faster service.

Eight shippers at Houston, Dallas, McKinney, and Texarkana, Tex.,[226] ship in less-than-truckload quantities to Atlanta, Birmingham, Pascagoula, Laurel, Jackson, and

Greenville, Miss., points in Arkansas and Florida, and with occasional shipments to points in Virginia and the Carolinas. From Texarkana to Arkansas points, the shipper uses Southwestern Transportation, ABF, and bus lines. Its primary complaint on existing service relates to some concealed damage on inbound shipments from Birmingham. The five shippers at Dallas use Red Ball to Mississippi, Jones to Arkansas, ETMF to Atlanta, Mercury Freight to Birmingham, and Roadway, Central, and Herrin to Florida points through interchange. Pickup service by Jones and Red Ball has not been too good. The general complaint is slow service and damage to lading. There is a lot of common carrier service available that has not been used.

A shipper[227] with manufacturing plants at Cleveland, Columbus, and Ashtabula, Ohio, Hammond, Madison, and Columbus, Ind., is interested primarily in the movement of traffic from Cleveland to the Gulf Coast area, mainly to Baton Rouge.

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[225] Witness No. 759.

[226] Witness Nos. 280, 317, 379, 398, 399, 472, 510 and 684.

[227] Witness No. 302.

New Orleans, Gulfport, and Pascagoula. About 2,000,000 pounds a year are shipped into the Gulf Coast area from all plants. Roadway is the origin carrier for most plants. Gordons and West are delivering carriers. It complains of poor service due to interline, but is not using the single-line service of ABF from Cleveland to most of the points involved herein.

Three shippers from Raleigh, Hickory, and Fayetteville, N. C.,[228] ship to points in Alabama, Louisiana, Mississippi, and Texas. From Hickory, over 200,000 pounds a month is shipped to Dallas by piggyback, ET&WNC/Herrin, Thurston/Red Ball, and private carriage. To Houston, it uses rail, Roadway, Johnson with its connections, and private carriage. Roadway does not always have sufficient equipment. Although supporting both Bowman and Johnson it has not used Bowman and has used Johnson sparingly. The shipper at Raleigh uses Thurston/Herrin to Louisiana points. To Houston, Dallas, and Fort Worth, it uses Thurston/ETMF. Other connecting motor carriers used for Strickland, RC, GFA, and Johnson. Roadway and Ryder serve Raleigh but have not solicited the traffic. From Fayetteville to New Orleans, Baton Rouge, Mobile, and Gulfport the shipper uses Overnite and Roadway as origin carriers with interchange at Atlanta, as well as the single-line service of Johnson. Until about a year ago Ryder's service had

been used but it was not satisfactory. Roadway also was found to be slow on its portion of the service. The present service is fair and other service is available, but the proposed service is supported in the desire for improvement.

A receiver of electrical supplies at Shreveport[229] receives shipments from various points including Syracuse, Hudson, and

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[228] Witness Nos. 299, 467, and 929.

[229] Witness No. 602.

New York, N. Y., Chelsea, Mass., Bedford, Newark, Jersey City, and Camden, N. J., Meriden, Jewett City, and Hartford, Conn., High Point and Henderson, N. C., Philadelphia and Ambridge, Pa., Atlanta and Carrollton, Ga., Denmark, S. C., and Birmingham, Ala. It uses Acme Fast Freight, Strickland, Red Ball, Ryder, Thurston, Akers, ETMF, Jack Cole, Dixie, Braswell, Herrin, Roadway, T.I.M.E., and Universal Carloading in single- and joint-line services. It prefers single-line services and schedules as proposed by Bowman and Johnson to speed up transit time and avoid tracing difficulties. The evidence does not show any use of the joint-line services offered by either of the carriers supported.

Two witnesses at Baltimore[230] ship in both truckload and less-than-truckload quantities to Hattiesburg, Laurel, Meridian, Gulfport, and Pascagoula, Miss., Little Rock and Pine Bluff, Ark., Baton Rouge, Lake Charles, Monroe, New Orleans, Shreveport, La., Mobile, Ala., Beaumont, Dallas, Fort Worth, Garland, Houston, Orange, Port Arthur, and Texarkana, Tex., and Pensacola, Fla. Johnson has been used to the Gulf area and Roadway to Texas points. Interline service is slow and tracing is poor, so the slower freight forwarder service is preferred over joint-line motor carrier services because of singular responsibility. Roadway presently provides a good deal of direct service. T.I.M.E. and ET&WNC offer single-line service to Little Rock but have not been used. Other motor carrier services are available which have not been tried.

Three receivers of merchandise at Baton Rouge and Monroe, La.,[231] receive less-than-truckload shipments from Trenton and Rockaway, N. J., Atlanta, Birmingham, Philadelphia, New York, N. Y., Matthews, N. C., and Jackson, Miss. Johnson and Strickland are origin carriers out of the East with Ryder used

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[230] Witness Nos. 257 and 859.

[231] Witness Nos. 558, 657, and 823.

on shipments out of Atlanta and Birmingham. Other carriers used are Herrin, Red Ball, Braswell, T.I.M.E., Jack Cole,

Campbell Sixty-Six, Valley Copperstate, Saia, and Gordons. The main complaint is slow transit time, but shippers usually route the traffic. The Monroe witness was not aware of the Harris/Ryder service and has not tried to use Bowman. Other services are also available to these shippers.

Three shippers at New Britain and Plainville, Conn., and Foxboro, Mass.,[232] ship in less-than-truckload quantities to Davenport, Irvington, Green Bay, Spring Hill, Mobile and Greenville, Ala., Gulfport, Ocean Springs, Bay St. Louis, and Biloxi, Miss., Gretna, Belle Chase, Port Allen, Harvey, New Orleans, Baton Rouge, and Metairie, La., Pensacola, Fla., and points in Texas. From New Britain and Plainville, Acme Fast Freight and Republic Carloading handle most of the traffic. Strickland is not used because its transit time is unsatisfactory. Two of these witnesses do not use Johnson because of difficulty in making through rate arrangements and also their wish to minimize the number of carriers used because of limited loading dock space. From Foxboro, Strickland is used and the service is satisfactory. Texas Freight (a freight forwarder), parcel post, and air express are also used along with such motor carriers as Johnson, T.I.M.E., Roadway, Merchants, and Central. Intercity is the pickup carrier at Foxboro and will continue to be so used, even if the instant applications are granted.

Six witnesses at Jackson, Miss.,[233] received inbound shipments in less-than-truckload quantities. One receives shipments from origins in the east and the others receive their freight from the Dallas, Atlanta, Birmingham and Chattanooga areas.

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[232] Witness Nos. 648, 649, and 883.

[233] Witness Nos. 149, 203, 205, 647, 665, and 670.

Much of the traffic from northeast United States is received through the Atlanta gateway. Three-line service is used in many instances where two-line is actually available. The shippers route most of the traffic. Red Ball is used on traffic from Dallas and this service has been satisfactory. Braswell offers a single-line service from Dallas. Other carriers used for a portion of this service are Jack Cole, West, GFA, Gordons, RC, McLean, GHE, Ryder, Deaton, Viking, Mason & Dixon, Dixie, Campbell Sixty-Six, Pilot, T.I.M.E., Treadway, Central, Merchants, and Universal Carloading. The most common complaint is slow service and they support the applications in the hope of receiving faster transportation.

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Some have made no investigation of existing services nor tried the joint-line services offered by the applicants they support.

A shipper of tape recorders and related parts from Colorado Springs, Colo.,[234] shipped during the month of September 1966, 13,000 pounds to Birmingham and 1,200 pounds to Atlanta. Red Ball is the origin carrier who interchanges with T.I.M.E., Transcon, Ryder, and Watson-Wilson. The complaint is poor transit time and it seeks single-line service.

A shipper of high voltage electrical equipment at Birmingham[235] ships a total of ten to twelve 5,000 pound shipments each month to Beaumont, Houston, Orange, and Texas City, Tex. It is presently using Mercury Freight and ETMF. It understands that Mercury Freight serves only Beaumont direct and it wants single-line service to all points. It has no complaint concerning its present service.

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[234] Witness No. 720.

[235] Witness No. 62.

A witness at Houston[236] receives approximately two trailer loads per week (40,000 pounds each), one each from Pawtucket, R. I., and Farmingdale, N. Y. From Irvington, N. J., it receives one trailer load every two months. On these inbound shipments he uses piggyback, Sea-Land, private carriage, and motor common carriage with ETMF, Lee Way and Southwestern as delivering carriers. He also makes outbound shipments to points in the southeastern United States. For the latter service he uses Roadway, Ryder, Herrin, Red Ball, and ETMF. He complains of poor pickup and long transit time. No shortage of service is shown, nor is need for more service established.

Two witnesses at Kansas City[237] ship in less-than-truckload quantities to points in Florida, Georgia, and South Carolina. Most shipments to Florida go by Universal Carloading and Acme Fast Freight. When motor carrier service is used, Roadway and Toedebusch are origin carriers and Ryder and Central are delivering carriers. T.I.M.E. and Watson-Wilson provide single-line service to Georgia. Roadway provides single-line service to South Carolina. They have no particular complaint about present service but would like more carriers.

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The testimony of these 51 witnesses shows that adequate transportation service is presently available. In general they desire the faster schedules proposed by the respective applicants supported, better tracing of shipments, and more single-line service. Yet many have services available which they have not tried, some have made no investigation of available services, and some acknowledge that their existing service is satisfactory but support applicants for more and possibly improved carrier services.

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[236] Witness No. 502.

[237] Witness Nos. 704 and 728.

Furniture

Approximately 31 witnesses testified with respect to their shipping experiences in the transportation of home, institutional, office, and school furniture, including lighting fixtures, appliances, drapes, carpets, greeting card display cases, and accessories.

Seven of these shippers of new furniture were from producing points in North Carolina, such as Statesville, High Point, Greensboro, Forest City, and Charlotte. Six of these witnesses[238] testified in support of applicants Bowman, Johnson, and Jones concerning their need for transportation service into Louisiana, Mississippi, Arkansas, Texas, Kansas, and Missouri points. One witness[239] supported Roadway for less-than-truckload service to certain points in Alabama, Florida, Mississippi, and Louisiana. These seven shippers have about 1½ million pounds of furniture moving into these States each year and are using consolidators, specialized motor carrier furniture haulers, freight forwarders, and some general commodity motor carrier services. They complain that transit time is too long, that there are delays at interchange points, and in some instances the shipments are returned because they cannot be interlined. Handling of furniture should be kept at a minimum and therefore single-line service is preferred.

Four shippers[240] from Rome and Atlanta, Ga., and Birmingham, Ala., support Baggett, Red Ball, Strickland, Deaton, Bowman, Johnson, and Jones for their proposed service to points in Arkansas, Texas, Mississippi, Colorado, Oklahoma, and Louisiana. The furniture moves in less-than-truckload quantities, much of it in two- and three-line service, and totals less

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[238] Witness Nos. 30, 31, 35, 37, 125, 668.

[239] Witness No. 387.

[240] Witness Nos. 21, 134, 150, and 761.

than 100,000 pounds a month. Collectively they use over 14 different

motor carriers, as well as the services of Southern Railway, Santa Fe, Missouri-Kansas-Texas, and REA. They complain of slow pickups, service delays at interchange points, and some difficulty in interlining furniture. The witnesses are not very familiar with the present service offered. Some three-line service is being used where two-line is available.

Four witnesses shipping primarily from Dallas[241] support the Bowman, Johnson, Jones and Herrin applications. They ship in small, less-than-truckload quantities to points in many States, such as Alabama, Florida, Georgia, Maine, Mississippi, Maryland, Massachusetts, North Carolina, South Carolina, New York, New Jersey, Pennsylvania, Tennessee, Rhode Island, Virginia, and the District of Columbia. The principal carriers used are Herrin, Roadway, Mercury, Strickland, Yellow Transit, Red Ball, Braswell and REA. The single-line service of present carriers is satisfactory and more single-line service is desired to avoid delay at interchange points and to cut down on damage to furniture because of excess handling. All are interested in faster transit time.

Four of the witnesses[242] support Johnson, Bowman, and Baggett, for inbound shipments to Dallas, Fort Worth, Beaumont, and Houston, Tex. These are small, less-than-truckload shipments for the most part originating at points in Alabama, Florida, Georgia, Kentucky, New Jersey, New York, North Carolina, South Carolina, Tennessee, and southern Virginia. They use rail service as well as existing motor carrier services of over 20 carriers, including such applicants herein as Herrin,

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[241] Witness Nos. 253, 366, 367, and 479.

[242] Witness Nos. 504, 534, 565, and 916.

Roadway, Strickland, Baggett, and Red Ball. These receivers complain about partial deliveries, slow transit time, and damage to the lading. They contend that this is caused by multiple handling through interline service. A large part of the freight moves by rail pool cars, or furniture consolidators and will continue to be so received. Ryder has been providing good service from points in Florida, Georgia, and the Carolinas, but of course a single-line service, as proposed by applicants, is preferred.

Four shippers[243] at Memphis, Tenn., Conway and Fort Smith, Ark., ship to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, and Tennessee. They ship primarily in less-than-truckload quantities and support the applications of Herrin, Bowman, and Jones. The services of approximately 10

different motor carriers are used. The three shippers at Conway and Memphis also use their own private equipment, especially for truckload quantities. Additional single-line services are sought to avoid delays and difficulties at interchange points.

Three receivers of furniture and materials[244] at Birmingham and Monroe, La., and Gadsden, Ala., receive shipments from points in Alabama, North Carolina, South Carolina, Missouri, Louisiana, Arkansas, Texas, Connecticut, New Jersey, Massachusetts, and Pennsylvania. The complaint with existing motor carrier service is time in transit, damage to merchandise, difficulty in tracing, and in some instances in obtaining carriers at interchange points. Most shipments are routed by the supplier. The company at Monroe also ships outbound to points along

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[243] Witness Nos. 689, 738, 739, and 800.

[244] Witness Nos. 600, 638, and 760.

the Eastern Seaboard. Rail pool-car is used where volume justifies.

A receiver[245] of office supplies and furniture at Jackson, Miss., supports Strickland. It has 40 to 60 less-than-truckload shipments coming in each month from Atlanta, Dallas, Houston, and Birmingham. They vary in weight from 25 to 1,000 pounds. A fast, consistent service is desired, which it is not receiving at the present time. It does not route this incoming traffic and leaves it up to the supplier.

Three receivers[246] of furniture and related supplies at Fayetteville, Fort Smith, and Little Rock, Ark., receive merchandise from points in New York, New Jersey, Virginia, North Carolina, South Carolina, Georgia, and Alabama. They all support Jones, and the receiver at Little Rock also supports Bowman. While the shipments, for the most part are small, there is a need for an expedited service to meet customer demands. One shipment from New York to Little Rock by Strickland was delayed so long that it had to be re-ordered. The existing interchange service of Bowman/Jones has never been tried. The service of Ryder and Mercury is reasonably good.

A receiver[247] at Muskogee, Okla., receives small shipments from points in Georgia, Virginia, and the Carolinas. It supports Jones and uses this carrier along with Rocket. There is no single service available on shipments from Atlanta. Two-line service is available but this is slow and increases the possibility of damage to the merchandise. Tracing has also been poor.

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[245] Witness No. 584.

[246] Witness Nos. 821, 847, and 850.

[247] Witness No. 824.

Some of these shippers manufacture furniture to specific orders and prompt delivery service, after completion of the orders, is necessary to maintain customer relations and to avoid order cancellations. As is true of other manufacturers, their wholesale and retail outlets maintain only minimum inventories, depending upon the supplier and the transportation services to meet their needs with respect to filling the orders within the time limitations of their customers.

Specialization in the manufacture of furniture results in many factories having wide markets and necessitates long hauls to the wholesale retail market. The general complaint against the services of the furniture consolidators and specialized new furniture motor carriers is that they often hold shipments to accumulate a sufficient volume of freight going to a certain area to make the operation economically feasible. The use of freight forwarders also is reported to be unsatisfactory in that the rail service utilized is slow and delays delivery of the freight. Insofar as the use of the services of general freight motor common carriers is concerned, these shippers find such services generally satisfactory to on-line points of the origin carrier. However, if it is necessary to interline the freight delays and poor service often are encountered as a result of difficulties experienced in locating a connecting carrier willing to accept the shipment and to handle it on a through-rate basis.

Furniture traffic is light and bulky, is easily susceptible to damage, and is difficult to handle in the same vehicle with other commodities because of stowage problems. The furniture shipper is faced with packing restrictions, lack of through-route provisions, and many times required to use a combination of local rates, which are often considerably higher than established joint rates applying on other types of traffic. Impliedly it is to the interest of these shippers to have available the single-line service of general commodity motor common carriers to as many points as possible within their distribution areas. There is no indication that the shipments as tendered to the various

transportation services have failed in any way to meet the tariff shipping requirements.

The record confirms the fact that some of both the applicants and protestants have tariff restrictions against the handling of new furniture beyond points on their own line or in some instances complete restrictions against the handling of such shipments within the area here involved. Shippers of furniture are to a large extent dependent upon motor common carrier service. Frequently wholesale and retail department stores maintain low inventories, do not purchase furniture in truckloads,

and may be situated at points far from major distribution centers. Few motor common carriers have the requisite authority or ability to provide a truly nationwide service and the furniture industry frequently depends upon the establishment by motor common carriers of through routes, joint rates, and interchange agreements for the most efficient and economical means of distributing a part of its goods. The Commission has frequently found that under section 216(c) of the Interstate Commerce Act it has no authority to require the establishment or maintenance of through routes and joint rates. However, it does have authority to end unreasonable practices. A motor carrier may not merely refuse to participate in joint movements of furniture, and, at the same time participate in such movements on other traffic. If a motor carrier chooses to participate in joint-rate and through-route arrangements with other carriers, it must do so uniformly, and may not unfairly except one type of traffic—such as furniture—from these arrangements.[248]

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[248] *National Furniture Conf. v. Assoc. Truck*, 332 I.C.C. 802, sustained *Assoc. Truck Lines, Inc., et al. v. United States et al.*, U. S. D. C., W. D. Mich. (S. Div.), Civil Action No. 6070, decided September 29, 1969; cf. *Restrictions on Interchange Arrangements*, 335 I.C.C. 356.

The Commission previously has given consideration to the transportation needs of furniture manufacturers. It concluded that in order to render the most efficient and adequate service for such shippers, the carrier should not be restricted to specific destination points (such as here proposed by these applicants), but should be authorized to serve all points within a general territory.[249] Such authority has been granted to a number of specialized furniture carriers serving the North Carolina manufacturers, and although these specialized carriers are not parties protestant to these general commodity applications, we note that their services have been employed by the shippers.

In assaying the present and future public convenience and necessity it is necessary that we give consideration to the question of whether the addition of the proposed scheduled regular route services of general freight carriers to specific major points within the States previously noted will in fact result in improved transportation services to the furniture industry supporting

these applications. The result of such additional transportation service may well be a deterioration of the existing services of the specialized furniture carriers specifically authorized to serve the industry by limiting the freight tendered to them to that which is destined to the more remote and smaller points not served by the general commodity carriers, thus depriving the specialized carriers of the economically important segment of their freight.

While not discounting entirely the testimony of these representatives of the furniture industry supporting the proposed regular route scheduled services of these general commodity

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[249] *DeKay Common Carrier Application*, 29 M.C.C. 95, 97; *Kennedy Common Carrier Application*, 27 M.C.C. 427, 429; *Trans-Cold Express, Inc., Ext.—Furniture*, 108 M.C.C. 129, 138.

applicants and recognizing the benefits which they may realize through such additional scheduled services to specific points, certainly the weight given to their testimony must be tempered by the recognized special transportation needs of this industry as previously noted. Furthermore, the impediments these shippers are experiencing for satisfactory service from existing general commodity carriers can be, and are being remedied through other appropriate action as noted. The record contains no data from which it may be determined to what extent, if at all, the freight of these shipper witnesses may be diverted from the existing basic specialized carriers without impairing their overall ability to serve the shippers. We do not believe that a need has been shown for additional service in the transportation of furniture.

Scientific Instruments, Containers and Supplies

Thirteen witnesses who ship or receive scientific instruments, containers, and suppies, testified concerning their need for motor carrier transportation. Bowman and Johnson called four witnesses each. Herrin called 3 and Roadway and Jones 1 each. In addition, Bowman was supported by 5, Johnson and Jones by 2 each, and Red Ball by 1.

Three shippers at Atlanta[250] ship in less-than-truckload quantities to points in Louisiana and Mississippi. They use ETMF, Dixie, Ryder, Gordons, Deaton, and REA. This service is generally satisfactory except that sometimes it takes too long for the freight to reach destination. The pickup service is slow and Ryder does not always pick up on the day called. They believe that a grant of the applications they support will provide additional carriers and a faster service with resulting increase in business.

[250] Witness Nos. 97, 166, and 175.

A witness at Texarkana, Tex.[251] ships approximately 90,000 pounds a year from Texarkana to Birmingham and Montgomery, Ala., Blytheville, Fayetteville, Fort Smith, and Jonesboro, Ark., Atlanta, Chamblee, and McDonough, Ga., Pittsburg and Wichita, Kans., Greenville, Miss., Joplin, Kansas City, and Springfield, Mo., and points in Oklahoma. Shipments are originated by ETMF, ABF, Southwestern, Red Ball, and Strickland. The witness does not route beyond the origin carrier. He complains of slow pickup service by ETMF and Strickland, but is not very familiar with the existing services.

A witness at Jackson, Miss.[252] receives approximately 40,000 pounds per year from Philadelphia, Jersey City, N. J., and points in New York. He uses such carriers as Akers, Viking, Mason & Dixon, T.I.M.E., Deaton, Gordons, West, Campbell Sixty-Six, and others. He is not satisfied with present transit time and wants single-line service. Jack Cole-Dixie has offered direct service from the New York area and solicited this business but the witness showed no interest in that offer of service. Neither has he tried the joint-line services available by either of the applicants he supports.

A witness at Houston, Tex.[253] ships approximately 100,000 pounds a month to his warehouses in Atlanta, Jacksonville, Wayne, N. J., and Rockville, Md. Some shipments also are made to other points in Florida, Georgia, the Carolinas, and points in the northeast. In addition he receives inbound shipments of about 100,000 pounds a month from Philadelphia, Baltimore, New York City, and Boston. He uses parcel post, REA, as well as the motor carrier services of Roadway, Ryder, Herrin, and ETMF, and has available the services of other

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[251] Witness No. 286.

[252] Witness No. 595.

[253] Witness No. 494.

carriers. Transit time is important and he would like more single-line service.

A receiver at New Orleans[254] receives two or three less-than-truckload shipments per month from Birmingham, and one or two shipments a week from Atlanta. He had used Ryder and West from Birmingham and Johnson, Jack Cole, and GFA/Red Ball from Atlanta. He complains of poor transit time, tracing difficulties, and claims problems.

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He wants more single-line service but has not tried all that is presently available. He is not aware of Baggett's direct service from both Atlanta and Birmingham.

Two receivers at Dallas[255] receive less-than-truckload shipments from Chattanooga, Tenn., and Deland, Fla. From Chattanooga the services of ET&WNC, Bowman, Robinson, ETMF, Western Gillette, Strickland, and Red Ball are used. From Deland Ryder is the origin carrier with Red Arrow, Central, Red Ball and Brown Express the delivering carriers. The witnesses complain of slow transit time, inconsistent service, and damage to the lading. They want more single-line service but have not used all the direct service now available, nor the joint-line service of the applicant supported.

The witness at East Rutherford, N. J.[256] is seeking a single-line service to Jackson, Miss., and the Louisiana and Texas points proposed to be served by Johnson. The traffic is presently moving by Johnson as origin carrier with interline to des-

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[254] Witness No. 643.

[255] Witness Nos. 259 and 292.

[256] Witness No. 923.

tinations. This service has been satisfactory but he would like single-line service to avoid rehandling of the merchandise. Some single-line service is now available which he is not using. The shipments to Texas points are presently moving by freight forwarder.

A witness from Baton Rouge[257] receives both truckload and less-than-truckload shipments originating at Edison and Metuchen, N. J., New York City, Stanford, Conn., Cincinnati, and Chicago. He receives six to eight shipments a week from points in Roadway's territory. He also uses Gordons, Red Ball, Strickland, and Campbell Sixty-Six. He is not satisfied with the present service due to a lack of consistency, slow delivery, and tracing problems. He supports Roadway's proposed single-line service, although he is unaware of various services available and apparently has made no effort to work out routings with his suppliers.

A witness at Memphis[258] makes shipments averaging about 200 pounds each to Birmingham, Mobile, Montgomery, Atlanta and Columbus, Ga. His principal interest is to Montgomery and Columbus. He uses the motor carrier services of Bowman, Herrin, Gordons, Ryder, West, and Jack Cole. Transit time is important as well as consistency of service. He has used the direct service of

Bowman to Columbus and that service was not satisfactory. This witness testified in support of Bowman in a previous application and at that time stated that Herrin's service was unsatisfactory. He now supports Herrin and has changed his mind concerning Herrin's service.

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[257] Witness No. 469.

[258] Witness No. 690.

A witness at Petersburg, Va.[259] makes small shipments of lens blanks, spectacle frames, and optical instruments to points in Arkansas, Louisiana, Mississippi, Texas, Kansas, and Missouri. About 80 percent of the traffic moves by parcel post. He also uses Bowman and its connections. Roadway was used but this service was stopped due to failure of Roadway to make pickups prior to 5 p.m. closing time. He uses Johnson in single-line service to New Orleans. There is plenty of service available but he wants single-line service by certain carriers.

These witnesses want more carriers with single-line service for greater competition. There is a great deal of both single-line and joint-line service now available that the witnesses are either not aware of or have not used. The evidence does not warrant the grant of additional authority.

Chemicals, Chemical Products and Cleaning Compounds

Thirty-four shippers and receivers of chemicals, chemical products, and cleaning compounds testified with respect to their need for transportation services. They support nine of the applications. Bowman called 11 witnesses; Roadway called 7; Red Ball 4, Herrin and Deaton 3 each, Johnson and Jones 2 each, and Baggett and Strickland 1 each. Some witnesses supported more than one applicant.

Seven shippers at or near Atlanta[260] ship primarily in less-than-truckload quantities to points in Mississippi, Louisiana, Texas, and Alabama. They use Dixie, Jack Cole, ETMF, and others as origin carriers. They also use T.I.M.E., GFA, West, United, Deaton, Akers, Ryder, Campbell Sixty-Six, Bowman, Baggett, Red Ball, Transcon, Gordons, Johnson, Roadway, and REA to serve the many points to which they ship. The pickup

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[259] Witness No. 327.

[260] Witness Nos. 34, 102, 145, 186, 418 and 622.

service by Deaton and Ryder is considered slow by some, and Baggett has

occasional delays at its terminal. Transit time in many instances is believed to be too long. There is no shortage of joint-line service, but a single-line service is desired if possible, although some of the witnesses are using joint-line service when single-line is available.

A witness at Plaquemine, La.,[261] receives from 1,500 to 2,500 inbound shipments annually. He ships outbound from 2,000 to 3,000 shipments, with a total weight of 8 to 12 million pounds. He is interested in shipments to and from points in Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia and Wisconsin. Air, rail, motor, and water carriers are used for both inbound and outbound shipments. He uses Herrin, Red Ball, Gordons, Copperstate, Saia, and Ryder as origin and delivering carriers at Plaquemine. He voices some dissatisfaction with all of these carriers. In shipping such a large volume of freight between so many points, he uses all carriers available. Joint-line service is all that is available in many instances. Single-line service is always preferred. Time in transit is important and a consistent service is necessary in order to meet schedules. Inbound goods must be received on time in order to maintain steady production. More service is desired.

Two shippers at Birmingham[262] ship to points in Arkansas, Louisiana, Mississippi and Texas. Campbell Sixty-Six is used

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[261] Witness No. 224.

[262] Witness Nos. 82 and 663.

to Greenwood, Greenville, and Cleveland, Miss. West is used to New Orleans and other Louisiana points. Baggett is used to Mississippi points. To Texas, they use ETMF, Ryder, Transcon, and Mercury Freight. They have had some difficulty with pickup service by Ryder and Campbell Sixty-Six, and desire a faster service. There are plenty of carrier services available, some of which they have not tried.

A witness at Wayne, N. J.,[263] ships from plants and/or warehouses at Princeton, Boundbrook, and Linden, N. J., Pearl River, N. Y., South Norwalk and Wallingford, Conn., and Springfield, Mass., to a warehouse in Dallas. About 8,000,000 pounds of traffic moves mostly in truckload quantities each year. He uses rail, freight

forwarders, seatrain and sealand service, and motor common carriers. Johnson can serve all of the origins. Other motor carriers that have been used are Bowman, Strickland, Roadway, and Akers. Other joint-line motor carrier services are available. During the past year he has used sealand service in preference to some motor carriers because the transit time, which is about nine days, is comparable and the sealand rates are lower. He wants a four-day transit time on volume shipments from New England to Dallas.

A witness at Cincinnati, Ohio,[264] with plants at Springdale and Blytheville, Ark., receives at Springdale shipments from Atlanta and Birmingham shipments of about 200,000 pounds in truckloads and from 2,000 to 4,000 pounds of less-than-truckload freight. He uses rail as well as Gordons and Jones. He considers present transit time too slow. He supports the proposed single-line services from Birmingham and Atlanta.

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[263] Witness No. 172.

[264] Witness No. 130.

Two witnesses at Mobile[265] ship in less-than-truckload quantities to Lake Charles, New Orleans, and Baton Rouge, La., and Port Arthur, Houston, Galveston, and Corpus Christi, Tex. Red Ball is used to Baton Rouge and Port Arthur, Baggett to New Orleans, Mercury Freight to Houston, and Red Ball/Ryder to Lake Charles. There also is a good deal of joint-line service available, but they prefer single-line service. They complain of late pickups and deliveries, and believe that more carriers will improve the service.

Two witnesses[266] who ship from Baton Rouge and Belle Chase, La. (New Orleans commercial zone), have a need for motor carrier service to points in Alabama, Georgia, Pennsylvania, Maryland, North Carolina, South Carolina, Tennessee, Ohio, and West Hill, Ontario, Canada. About 20 truckloads a year move by Gordon/Ellis/Intercity through Chicago and Detroit to Canada. Other service is available but has not been tried. Herrin is used to Alabama and Georgia. To points in the Eastern United States, Red Ball, Campbell Sixty-Six and Gordons and their connections are used. From Baton Rouge about 45 million pounds annually is shipped to points throughout the United States. This witness believes that the more competition there is between carriers the better the service.

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Two shippers at Miami, Fla.[267] ship in less-than-truckload quantities to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. Virtually all of the traffic originates with Bowman and routing beyond Bowman is left up to the carrier. Some of these connecting carriers have been

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[265] Witness Nos. 4 and 912.

[266] Witness Nos. 393 and 443.

[267] Witness Nos. 782 and 807.

T.I.M.E., Transcon, and Gordons. Ryder also offers some single-line service which has not been tried. They want a fast, single-line service to all points.

A receiver at Mobile[268] receives about 10 to 12 shipments per month from the New Orleans area, consisting of approximately 4 truckloads and 6 to 8 less-than-truckload shipments, averaging 2,000 pounds per shipment. The company performs private carriage on about half of the truckload traffic moving from New Orleans to Mobile. It has used such carriers as Johnson, Baggett, and West, and has had some difficulty with most of this service. It wants an overnight service.

The witness at Charlotte, N. C.,[269] is interested in both truckload and less-than-truckload shipments received at its branches at Baton Rouge and Jackson, Miss. This traffic originates in New England, the East Coast, the Carolinas, and Georgia. He uses such carriers as Dixie, Red Ball, Associated, Ryder, Viking, McLean, and West. He complains of slow service and poor claims settlements, and desires a direct single-line service to eliminate these difficulties.

Three shippers at Dallas[270] ship in less-than-truckload quantities to points in Alabama, Georgia, Florida, and Mississippi. To Alabama and Georgia points, such carriers as Red Ball, Gordons, Jones, Transcon, and ETMF are used. Herrin and Mercury Freight are used as origin carriers to serve points in Florida. On shipments to Mississippi the shipper uses Red Ball and its connections. On shipments from New Orleans to Greenville, Miss., Campbell Sixty-Six is used. On movements from Atlanta to Dallas, ETMF and Roadway are being used. These three witnesses all complain that the transit time is too long

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[268] Witness No. 3.

[269] Witness No. 39.

[270] Witness Nos. 221, 318 and 435.

and they prefer single-line service, although they have not used some of the single-line service that is now available.

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A witness at Cincinnati, Ohio,[271] receives about 3,000,000 pounds per year in truckloads from Mobile. In 1965, he made 19 shipments, weighing 371,000 pounds to Baton Rouge. Shipments to Baton Rouge move primarily by rail and joint-line motor carrier service. He uses Ellis, Roadway, Viking, and A&H as origin carriers, with Gordons, Ryder, Red Ball, and Saia as delivering carriers. From Mobile he uses Jack Cole and Campbell Sixty-Six as origin carriers for interchange with A&H. He wants a more consistent service with more carriers for more competition.

Two witnesses at Greenville and Mauldin, S. C.[272] ship each month approximately 160,000 pounds to Mobile, 80,000 pounds to Pensacola, 40,000 pounds to Mississippi points, 120,000 pounds to Louisiana and 175,000 pounds to Texas points. Both operate as private carriers, one transporting about 50 percent of this traffic on its own equipment, and the other about 85 percent. They use common carriers for overflow freight. For common carriers they use Johnson, Bowman, Floyd & Beasley, Roadway, Ryder, Thurston, Akers and piggyback. One, supporting Johnson and Bowman, complains that Roadway will not provide protection from freezing during the winter months. The other, supporting Roadway, has had difficulties with Johnson (whom his predecessor supported) on delays in transit, missed shipments, and dirty equipment. Johnson can provide a lot of single-line service he is still using them "as a matter of convenience." This witness has had some problems with Ryder on claims. More single-line service is desired.

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[271] Witness No. 42.

[272] Witness Nos. 210 and 870.

Two witnesses at Baton Rouge[273] make both truckload and less-than-truckload shipments. They receive shipments from points in Connecticut, Delaware, Maine, New Jersey, New York, Pennsylvania and Rhode Island. Outbound shipments are made from Baton Rouge and Orangeburg, S. C., to points in the above States as well as Louisiana, Maryland, Massachusetts, Virginia and Texas. From Baton Rouge, Saia or Copperstate is used to New Orleans for interchange with Johnson. The shipper also uses Herrin and Red Ball to Memphis for interchange at that point with their connecting carriers. From Orangeburg to Texas they use Huckabee, Deaton and Herrin. To Baton Rouge, Huckabee, Deaton and Poplarville Truck Line are used. Akers provides a joint-line service with its connecting carriers which is reasonably satisfactory, but they want single-line service. They have not used the Ryder/Harris service from northeastern United States, nor many of the other services available.

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Two shippers at Kansas City, Mo.,[274] ship over 2,000,000 pounds a year in truckload and less-than-truckload quantities to points in Tennessee, Alabama, Georgia and Florida. The bulk of the traffic goes to Florida points. Shipments originate in Kansas City by Campbell Sixty-Six, Watson-Wilson, Gordons, T.I.M.E. and Roadway. Delivery carriers in Florida are Howard Hall, Tamiami, Terminal Transport, Bowman, Central and RC; in Tennessee, Watson-Wilson and Gordons are used; in Alabama they use Gordons; and in Georgia they use Roadway. A faster service to Florida points is desired, such as is proposed by Bowman.

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[273] Witness Nos. 109 and 599.

[274] Witness Nos. 692 and 719.

A shipper at Sevierville, Tenn.[275] (30 miles southeast of Knoxville), is interested primarily in shipments to New Orleans. Skyline Transportation and Knoxville-Maryville Express are used as origin carriers to Knoxville where the shipments are interlined with Ryder for delivery at New Orleans. Other joint-line service is available from Knoxville. Present service is slow and it believes that the proposed service of Roadway would be an improvement.

A shipper at Nashua, N. H.,[276] is interested primarily in service to points in Louisiana. A local carrier is used from Nashua to Boston where the traffic is interlined. It has been using Strickland, but is dissatisfied with this service because it interlines the freight at New Orleans. It was not aware of the Johnson service into the Louisiana area. It prefers single-line service over joint-line service and supports Roadway in the hope that it will serve all his Louisiana points direct.

A witness at Charlotte, N. C.,[277] is presently shipping from 1,000 to 2,000 pounds weekly to each point of Hattiesburg, Laurel, Jackson and Meridian, Miss. He is interested in developing traffic to points in Louisiana and Texas. He uses Bowman to Memphis for interline with connecting carriers into Mississippi. He has experienced trouble in tracing these shipments. He has not used Johnson as the origin carrier for interline at New Orleans, nor investigated other available services, but supports Bowman and Johnson in an effort to obtain better service.

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A witness at Jeffersonville, Ind.,[278] is presently shipping a total of 10,000,000 pounds a year to Columbus, Greenville,

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[275] Witness No. 267.

[276] Witness No. 454.

[277] Witness No. 658.

[278] Witness No. 899.

Hattiesburg, Jackson, Laurel, Vicksburg, Meridian and Greenwood, Miss., and Baton Rouge, La. His company is building a new plant at LaGrange, Ga., and in the future this plant will be used to supply these points. Dixie/Jack Cole, Roadway and GHE can serve the new plant. There are a number of joint-line services available, but the witness desires the proposed service of Bowman which would meet his needs.

There is considerable competition among joint-line carriers to serve these shippers. There were complaints of slow service, poor pickups, some damage to the merchandise, and also difficulties in tracing. Some shippers, however, are using two and three-line service where one and two-line is available. There is also motor carrier service available that has not been tried. A desire for more carriers to stimulate greater competition among carriers does not warrant a grant of more authority.

Paper and Paper Products

Thirty-three witnesses supporting nine of the applications testified with respect to their need for transportation services for the movement of paper and paper products. Red Ball called 8 witnesses, Bowman called 6, Stickland and Johnson 5 each, Jones called 3, Herrin and Roadway 2 each, and Deaton and Baggett 1 each. Fourteen of the witnesses supported more than one applicant.

A shipper at Birmingham[279] ships envelopes to Chicago and points in Louisiana, Mississippi, Texas, Missouri, Oklahoma, and Arkansas. The average shipment weighs about 1,200 pounds. To Chicago it uses Gordons and Terminal Transport. West is used to New Orleans and Mississippi points. For other points it uses Ryder, ETMF, Gordons, Transcon and Campbell Sixty-Six. Service by Campbell Sixty-Six to Little Rock is

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[279] Witness No. 86.

limited to Mondays, Wednesdays and Fridays. Other motor carrier services are available which have not been used.

A sales representative at Metairie, La.,[280] ships cartons from Birmingham to New Orleans, Houston, Beaumont and Orange, Tex. Deaton is used from Birmingham to New Orleans with Herrin and Ryder from New Orleans to Texas points. About two truckloads move each month and several less-than-truckload shipments. He wants faster service but has no knowledge of existing services.

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A manufacturer of paper and paper products at Mobile[281] testified concerning transportation, insofar as here pertinent, from Mobile, Georgetown, S. C., Moss Point, Miss., Bastrop and Springhill, La., and Camden and Pine Bluff, Ark., to the proposed points, as well as those presently authorized to Johnson and Bowman. A large volume of traffic moves in both truckload and less-than-truckload quantities. From Georgetown it uses Bowman and Johnson as well as others. From Mobile it uses Mercury Freight and Red Ball; also the joint-line services of others including West. From Moss Point it uses Johnson and Red Ball and joint-line services of others including West and Wilkerson. The plant at Bastrop, which is 25 miles north of Monroe, uses Red Ball and Burks as origin carriers with their connecting carriers. From Springhill it uses piggyback mostly, but also Strickland and Red Ball and connecting services. From Camden it uses ABF, Southwestern, Herrin, Atlas, and connecting carriers. From Pine Bluff it uses ABF, Southwestern, Superior Forwarding, Red Line and connecting carriers. Many other carrier services are also available which have not been used. It complains about slow transit time and occasionally a shortage of equipment when requested on short notice.

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[280] Witness No. 544.

[281] Witness No. 207.

Nine shippers and receivers at Atlanta, Dallas and Grand Prairie, Tex., and Jackson, Miss.,[282] ship or receive over 20 million pounds annually in truckload and less-than-truckload quantities. They ship primarily from Atlanta to Dallas, Houston, Beaumont, Orange and Waco, Tex., Jackson, Forest, Greenville, Pascagoula, Clarksdale, Meridian, Grenada, Tupelo, McComb, Laurel and Natchez, Miss., Little Rock, El Dorado, Pine Bluff and Magnolia, Ark., Birmingham and points in Louisiana. United/Mercury Freight, Transcon and Gordons are used from Atlanta to Houston and Dallas. ETMF is also used to Texas points. To Louisiana points they use Deaton, Dixie and Johnson direct to New Orleans and Deaton/Herrin to Alexandria. Ryder is also used to Louisiana points. Transcon is used to Memphis with interline carriers to Little Rock and ETMF is also used to Arkansas points. Dixie is used to Jackson and Gordons to Greenville. Johnson, Dixie, Bowman, Deaton, GFA, Campbell Sixty-Six, West and Ryder are also used to Mississippi points. The receiver at Jackson receives about 65 less-than-truckload

shipments per month from scattered points in the eastern United States. Such carriers as Johnson, ETMF, T.I.M.E., Viking, Dixie Ohio, M&D, and Universal Carloading are available. It uses Red Rall on interchange at Dallas, Deaton and Dixie from Atlanta, West from Birmingham and Ryder from Nashville. The shipper at Grand Prairie (Dallas commercial zone) has about 100 shipments a month weighing from 30 to 1,000 pounds each moving to Jackson and Greenville. It uses Red Ball and Braswell and leaves it up to Red Ball to select the connecting carrier. These witnesses have experienced a shortage of equipment on occasion but the main complaint is slow transit time. A lot of service is available but they would like more of it to be single line.

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[282] Witness Nos. 1, 16, 32, 66, 84, 168, 201, 248, and 376.

Two witnesses[283] who ship in truckload and less-than-truckload quantities from Atlanta, Savannah, Stone Mountain and Augusta, Ga., to points in Arkansas, Louisiana, Mississippi, Texas, Oklahoma and Missouri use Bowman as origin carrier at Savannah for interchange with Mercury, Gordons, Jones, Red Line and Watson-Wilson. Roadway is used to Texas and Oklahoma. Herrin is used to Louisiana, Arkansas and Texas points. Other carriers used from and to the above points and Brown, Johnson, Ryder, Howard Hall, McLean, Jack Cole, Youngblood and Transcon. Some difficulty has been encountered at Savannah in obtaining equipment from Roadway. Present service is adequate but more single-line service is desired.

A witness at Mobile[284] shipped during April 1966, 500,000 pounds to Houston, 400,000 pounds to Dallas, 175,000 pounds to Fort Worth, and 220,000 pounds to Mineral Wells, Tex., in truckload quantities. Private carriage is used to Dallas, Fort Worth and Mineral Springs. Mercury and West/Herrin have been used to Houston. He wants overnight service to Houston. On certain shipments tendered Mercury the service was third and fifth morning. West/Herrin provided second day service. He prefers single- to joint-line service.

A receiver at Union Springs, Ala.[285] receives about one truckload a week usually from Decatur, Ga. It did receive one truckload from Dallas by Gordons/A-OK, which took too long. Baggett is the only carrier with a terminal in Union Springs. ETMF also serves Dallas and could interchange with Baggett. It is expected that

[283] Witness Nos. 26 and 873.

[284] Witness No. 208.

[285] Witness No. 164.

more traffic will come from Dallas in the future and the witness proposes to try any service that may be available.

A witness at El Dorado, Ark.[286] has shipments at least once a week to Greenville, Miss., with an average weight of 100 to 300 pounds. He also makes less-than-truckload shipments to Atlanta, Birmingham and other points which could be interchanged at Atlanta. He uses Herrin and Red Ball with open routing, but prefers single-line service.

A shipper at Nashua, N. H.[287] ships approximately 1,200,000 pounds each year in less-than-truckload quantities, to points in Louisiana, Mississippi and Texas. It uses pool trucks, pool cars, air freight as well as motor common carriers. To Boston it uses Nashua Motor Express for interchange with other carriers. From Boston it uses Strickland, Roadway, Johnson and Consolidated. Strickland and Roadway serve many of the points Johnson seeks to serve. Roadway has refused shipments because it lacked equipment. Many motor carrier services available provide a 2- and 3-line service.

Two witnesses at Crossett, Ark.[288] ship a large volume of freight, mostly in truckload quantities to points in Alabama, Florida, Georgia, the Carolinas, eastern Tennessee and San Antonio, Tex. During a representative 3-month period of June, July and August 1966, the shipper had 37 truckloads to Birmingham or Atlanta, or through those gateways to other southeastern points. ABF, Red Ball and Red Line maintain terminals at Crossett. These origin carriers interchange with connecting carriers to serve this area. About 12 truckloads a month are received inbound from Birmingham, Atlanta and Savannah. In addition to supporting Strickland it also supports Jones to

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[286] Witness No. 799.

[287] Witness No. 885.

[288] Witness Nos. 410 and 557.

Chicago, Atlanta and Birmingham, and Bowman to Florida points. At the present time it is using private carriage to Florida. It wants more direct single-line service.

A witness at Little Rock[289] has traffic moving between Dallas and Atlanta and estimates the tonnage from 5,000 to 20,000 pounds in both directions monthly. From Dallas to southern Arkansas points he ships about 90,000 pounds per month. From Atlanta to these Arkansas points, from 1,000 to 15,000 pounds per month.

He uses Johnson from Atlanta to Louisiana points and Ryder, Transcon, T.I.M.E., Gordons and ETMF to points in Arkansas. From Dallas to Arkansas he uses Jones, ETMF, Mercury, Roadway and Red Ball. He has complained about poor service from ETMF and Red Ball. He believes that the Johnson, Bowman and Jones proposals would be a big improvement over the present service.

A shipper and receiver at Kalamazoo, Mich.[290] is principally interested in inbound movements from Brewton, Ala., and outbound shipments to New Orleans. The inbound movement of one million pounds per month is mostly by rail. Outbound it has about 60,000 pounds annually in less-than-truckload shipments. It uses the services of Caton, Terminal Transport, Jack Cole, Gordons and Cleman's Truck Line. This has been a reasonably adequate service. The present joint-line motor carrier service from Brewton is performed at class rates which are too expensive. Roadway has a terminal in Kalamazoo and if it were to receive authority from Brewton and put in commodity rates, and provide a 3-day service it would use them. With class

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[289] Witness No. 464.

[290] Witness No. 872.

rates however Roadway would only be used on emergency shipments. It wants single-line service but has used 3-line haul from Brewton even though 2-line service was available.

Two shippers at Dallas and Wolfe City, Tex.[291] ship about 9,000 pounds a week to Atlanta, Birmingham, Greenville, Miss., and points in Florida and the Carolinas. Three shipments a year are made from Dallas to Greenville, each weighing 86 pounds. Service to Greenville is unsatisfactory because of poor pickup by Jones. Dallas shipments to Birmingham and Atlanta have been satisfactorily made by Transcon and ETMF. Loading facilities at the dock in Dallas are crowded and that shipper wants one carrier to originate all shipments and divide the traffic between the four supported applicants. Red Ball is the only carrier serving Wolfe City so it selects the connecting carrier.

A witness at Kansas City, Mo.[292] ships a total of about 16,000 pounds a month to Atlanta, Birmingham and Greenville, Miss. Gordons and Campbell Sixty-Six provide single-line service to Birmingham and T.I.M.E. and Gordons give single-line service to Atlanta. Red Ball is also used. He requires clean, waterproof equipment and has complained about dirty equipment furnished by Gordons and T.I.M.E. He does not use the single-line service of Watson-Wilson because of an argument over freight rate classification.

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Two receivers at Houston[293] receive less-than-truckload shipments from Atlanta and Columbus, Ga., and Mobile. Some drop shipments are made to points in Arkansas and Louisiana. From Atlanta they use Bowman/Herrin and Jack Cole/Red Ball with

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[291] Witness Nos. 228 and 310.

[292] Witness No. 693.

[293] Witness Nos. 412 and 523.

Herrin and Red Ball making drop shipments to Louisiana points. They also use Roadway single-line service. From Mobile they use West/Herrin over New Orleans and Mercury Freight direct. They want Red Ball and Herrin to be able to provide a single-line service with dropoffs to Louisiana points.

A shipper at West Monroe, La.[294] shipped approximately 260 million pounds by motor carrier in 1965 to all points in the United States. It is interested here primarily in shipments to points in Alabama, Georgia, Florida, Carolinas, Virginia, West Virginia, Maryland, Pennsylvania, New Jersey and New York. It uses Ryder, Red Ball and Braswell as origin carriers. Herrin is also available but because of "strained relations" is not using that carrier. It complains about the poor pickup service by Ryder and that it does not make pickups 24 hours a day. It also complains that its motor carrier service has not been consistent and it has had frequent tracing problems. Ryder has promised to improve its service. Some of the connecting carriers used are Strickland, Roadway, T.I.M.E., McLean, Mason & Dixon, Akers, Consolidated, ET&WNC, Overnite, West, ETMF and Jack Cole. It desires more carriers with single-line service.

A witness at Dallas[295] receives approximately 5,000 pounds per month from Atlanta. The average weight per shipment is 815 pounds. He uses United/Mercury Freight as a better service than the single-line service of Gordons, ETMF and Transcon. He complains that shipments are delayed by Roadway at Dallas because of congested terminal conditions.

A witness at Springfield, Mo.[296] moves about 30 shipments a week averaging 200 pounds each. He ships to points in Ala-

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[294] Witness No. 466.

[295] Witness No. 485.

[296] Witness No. 726.

bama, Tennessee, Florida, Georgia and the Carolinas, using such carriers as T.I.M.E., Jones, Roadway, Campbell Sixty-Six and REA as origin carriers with Ryder, AAA, Robinson, Central, Brown and McLean as delivering carriers in the instances where single-line service is not available. He considers present motor carrier service too slow.

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A witness at Baton Rouge[297] receives weekly shipments from New York, New Jersey, Ohio, Indiana and Illinois. These shipments vary from 100 to 1,000 pounds each and total approximately 4,000 pounds per month. He uses Universal Carloading, Gordons, Saia, Ryder and Viking. He will use Roadway's single-line authority if granted. He considers the present joint-line service too slow.

A witness at Cantonment, Fla.[298] (Pensacola commercial zone), ships about 350,000 tons a year and uses rail, piggyback and motor carrier. He is primarily interested herein in shipments to Crossett, Ark., Kansas City and Springfield, Mo., Garland, Longview, Port Arthur and Texarkana, Tex., Jackson, Meridian and Columbus, Miss. In 1966 he shipped by motor carrier approximately 100,000 pounds to the above points. The motor carrier services of Herrin, Mercury, Southwestern, Red Ball, Alamo Express, Cooper and West are used. The two-line service now available is satisfactory but he wants additional carriers with fewer interchanges.

The witness at Jasper, Tex.[299] ships to Atlanta, Birmingham and Greenville, Miss. Outbound shipments vary in weight from 100 to 3,000 pounds and inbound shipments average 250 pounds and are received about twice a month from Atlanta.

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[297] Witness No. 470.

[298] Witness No. 754.

[299] Witness No. 805.

Outbound shipments are routed Red Ball with routing beyond left open. On inbound shipments the origin carrier is left up to the supplier, but the shipper specifies Red Ball as the delivering carrier. The witness considers the present service too slow and wants Red Ball's proposed single-line service.

The witnesses complain primarily about slow service and blame it on delays caused by interchange which also increases damage to the merchandise as well as tracing difficulties. Some complain about poor pickup service especially on small sporadic shipments. They all want more direct single-line service. There is adequate joint-line service now available. The evidence does not warrant the grant of additional authority.

Light and Bulky Articles

Sixteen witnesses testified concerning their need for the transportation of light and bulky articles. They supported seven of the applications. Herrin and Jones

called 4 witnesses each, Bowman called 3, Johnson called 2, and Red Ball, Strickland and Deaton called 1 each. Bowman was also supported by two witnesses and Jones and Johnson by 1 each.

Five witnesses from Houston, Arlington and Itasca, Tex.[300] ship in less-than-truckload quantities to points in Alabama, Arkansas, Florida, Georgia, Mississippi and South Carolina. From Houston Herrin, ETMF, Roadway, Ryder and Mercury Freight are used as origin carriers and sometimes Strickland. Two or three years ago Ryder requested one shipper to use other carriers for this freight and difficulty has been experienced in

[300] Witness Nos. 313, 364, 487, 517 and 526.

getting pickups by Roadway. Delivering carriers include Johnson and Gordons. Red Ball is used to Jackson and Mercury/United to Atlanta. From Arlington the shipper uses such carriers as Transcon, Roadway, Herrin, Red Ball, Strickland and ETMF. From Itasca it uses Red Ball and Central Freight Lines. These shippers desire single-line service but in many instances they are not now using single-line service which is available. They have had some difficulty with claims and pickup. Generally they want a faster service.

Two witnesses from Aiken, S. C.[301] ship outdoor flourescent lighting fixtures and supplies in less-than-truckload quantities to points in Arkansas, Louisiana, Missouri and Texas. Present carriers used are Yellow Transit (formerly Watson-Wilson), Southeastern, Overnite, Bowman, Huckabee and ETMF (at Atlanta). The shipper stopped using Red Ball because of poor public relations. Bowman service has been fair. Johnson does not always make daily pickups. The shipper prefers single-line service as proposed by Bowman because the merchandise is fragile and subject to damage with handling.

One of two witnesses at New Orleans[302] ships steel doors and frames to Columbus, Montgomery, Birmingham, Jackson, Atlanta and Mobile, and the other receives electrical supplies from Atlanta. All shipments are less-than-truckload. They use the services of Herrin, Ryder, Red Ball, Baggett, Johnson and Deaton. Dixie has refused to handle some of its shipments because the door frames are so easily damaged. The witness prefers not to use Johnson out of Atlanta because of poor delivery time and poor claims handling, and was not satisfied with the occasional use of Ryder.

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[301] Witness Nos. 893 and 894.

[302] Witness Nos. 144 and 572.

A witness at Atlanta[303] ships lighting fixtures in less-than-truckload quantities about twice a week to Baton Rouge and once a week to Monroe, La. He uses Ryder, Baggett, Jack Cole and Johnson. He does not know if these carriers are providing him with single-line service or not. He prefers to limit the number of carriers serving his plant because of limited loading facilities.

A shipper at Emigsville, Pa.[304] (York, Pa. commercial zone), ships Christmas ornaments and decorations in less-than-truckload quantities weighing 200 to 600 pounds. The heavy shipping season is in the fall. Annually it ships 75,000 pounds to Mississippi, 150,000 pounds to Louisiana, and 1,110,000 pounds to Texas. It is using Acme Fast Freight, T.I.M.E., Mercury Motor Freight, Yellow Transit and Akers. It has been unable to get Roadway and Consolidated to make pickups. It has started using Johnson and is able to obtain equipment from them. The commodity is light and bulky and considerable undesirable freight. It has not tried some of the services available.

A witness at Monroe, La.[305] receives light fixtures in less-than-truckload quantities from points in New York, Pennsylvania and Massachusetts. It uses Acme Fast Freight, Braswell, Herrin, Jack Cole, Red Line, Ryder, Roadway, T.I.M.E. and others. He complains of slow transit time but tells his suppliers to route the traffic and they have never used Johnson or Bowman, the applicants he supports. He knows of the Ryder/Harris single-line service from many of the points at which its shipments originate but has never requested that service.

A shipper at El Dorado, Ark.[306] ships incandescent lighting fixtures in less-than-truckload quantities to points in Oklahoma,

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[303] Witness No. 579.

[304] Witness No. 913.

[305] Witness No. 586.

[306] Witness No. 678.

Missouri, Alabama, Georgia and Texas. ABF gives direct service to Kansas City but is not used because of customer complaints and it therefore uses Atlas/Campbell Sixty-Six. It uses Red Ball who has a terminal in El Dorado to Dallas; Atlas/Transcon to Oklahoma and Herrin to Memphis for interline with connecting carriers. Bus service is used on about a third of the shipments. Transit time is important and it prefers single-line service because it affords better tracing.

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A shipper at Birmingham[307] ships in truckload and less-than-truckload quantities to points in Alabama, Arkansas, Florida, Illinois, Kansas, Louisiana, Missouri, Mississippi, Oklahoma, Tennessee and Texas. It uses Campbell Sixty-Six to points in Tennessee, Mississippi, Arkansas and Kansas; Deaton to Louisiana and Mississippi; ETMF to Texas, Arkansas and Tennessee; Campbell Sixty-Six and Ryder to Missouri; and Mercury Freight to Texas. It complains about slow transit time and poor pickup with respect to Gordons, Transcon, Jack Cole and Ryder. Mercury Freight service was excellent until recently when pickup difficulties have developed. Bowman's pickup service has been good.

A shipper at Wichita, Kans.[308] in 1966 shipped approximately 150,000 pounds to Atlanta, Birmingham and Florida points. It uses Transcon and Yellow Transit as origin carriers. It has not used Jones as an origin carrier in Wichita for interline into Georgia and Florida within the last couple of years. The commodity is double wall vent pipe and heating and air conditioning ducts which are very light and 12,000 pounds fills a 40-foot trailer. It is considered undesirable freight.

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[307] Witness No. 617.

[308] Witness No. 724.

A shipper at Siloam Springs, Ark.[309] shipped in 1966, 175,000 pounds into Alabama and Georgia. It expects to ship 350,000 pounds into these two States in 1967. The commodity is plastic pipe and fittings and 7,000 pounds will fill a road trailer. It has used ABF, Jones, Campbell Sixty-Six, Rubel Transfer and Gordons in single- and joint-line service. It complains of slow transit time, poor pickup, and difficulty in obtaining equipment. It supports Jones for more single-line service.

These witnesses have what is usually considered undesirable freight. It is light and bulky and easily damaged. Carriers seem reluctant to pick it up. There is a great deal of motor carrier service available and a grant of more authority will not solve their problems other than that single-line service might result in less handling of the merchandise and less damage.

Others

Certain other witnesses testified in this proceeding with respect to their interest in these applications and their concern for transportation.

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Two witnesses at Tyler, Tex.[310] ship well over 5 million pounds of rose bushes annually to points in the United States. They are primarily interested in shipments to Birmingham, Atlanta and Greenville, Miss., and in March 1966 one of these shipped 2,403 pounds to these three points. The transportation of rose bushes is exempt except when moving with commodities which require authority. Red Ball is being used exclusively as the origin carrier with routing beyond left open. Roadway, ETMF, and Southwestern also serve Tyler but have

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309 Witness No. 776.

310 Witness Nos. 311 and 708.

not been used recently because of limited dock space. Red Ball can serve more points direct than any other line and is, therefore, being supported for more single-line authority.

Two witnesses at Gravette, Ark.[311] ship black walnut kernels and soft abrasive grit from Gravette and Stockton, Mo., to points in Alabama, Georgia, Tennessee, and Florida. In 1966 they had 65 shipments into Alabama with about half to the Birmingham commercial zone; 48 shipments into Georgia with about half moving to Atlanta or its commercial zone; 49 shipments to Tennessee; and 24 shipments to Florida. These shipments average 500 pounds each. Out of Stockton they use Humansville or Manley to Springfield, interlining with T.I.M.E. to Atlanta and Campbell Sixty-Six to Birmingham. Out of Gravette they use Jones and Campbell Sixty-Six. They receive approximately 125,000 paper bags annually from Mobile. They complain of slow transit time and support Jones and Bowman in an effort to obtain more single and two-line service.

Six witnesses representing the Atlanta Freight Bureau, the Greenville Port Commission and Chamber of Commerce, the Dallas Chamber of Commerce, the Texarkana Chamber of Commerce, the Lake Charles Harbor and Terminal District, and the Greater El Dorado Committee,[312] testified and submitted statistics to show that the industry and facilities in their areas are growing and consequently will need relatively improved motor carrier service.

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[311] Witness Nos. 711 and 744.

[312] Witness Nos. 20, 73, 242, 329, 509 and 679.

APPENDIX D

Protestants

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APPENDIX D

Protestants

Of the 60 protestants remaining in this proceeding for which appearances were entered, evidence was presented on behalf of 48 of them through the testimony of 62 witnesses and numerous exhibits. This is summarized as follows.

Holloway Motor Express, Inc. (Holloway)—Gadsden, Ala. **Protest:**—The Bowman application insofar as it seeks authority for the transportation of general commodities between Birmingham, Ala., on the east and Topeka, Kans., Kansas City, Kans.; and Kansas City, Mo., on the west.

Operations:—Insofar as this application is concerned Holloway is authorized to transport over irregular routes:

> Tires, tire fabrics, tire treads, and related items generally between Topeka, Kans., and points within 10 miles of Topeka, Kansas City, Kans., Kansas City, Mo., and points in Missouri within 10 miles of Kansas City, on the one hand, and, on the other, Birmingham, Decatur and Gadsden, Ala., Cedartown, Rockmart, Cartersville and Atlanta, Ga., and points within 10 miles of Atlanta, and Memphis, Tenn.; also
>
> Paper and printed forms from Topeka to Birmingham and Gadsden; also

Grain, grain products, grain byproducts, animal and poultry feeds and ingredients thereof, generally from points in Kansas and Missouri (except St. Louis and its commercial zone and certain other areas) and from Alton, Ill., to points in Alabama north of a line extending along U. S. Highway 84 from the Mississippi-Alabama State line to junction U. S. Highway 331 near Opp, Ala., thence along U. S. Highway 331 to junction U. S. Highway 80 at Montgomery, thence along U. S. Highway 80 to the Alabama-Georgia State line, and to points in Georgia north of U. S. Highway 80; also from Alton, Ill., to points in Tennessee; and from Vernona, Mo., to Knoxville, Tenn.

Interest:—Insofar as this protest is concerned, Holloway maintains terminals at Gadsden and Topeka. Its principal shipper is Goodyear Tire and Rubber Company and its road equipment (27 over-the-road tractors and 53 van trailers) were purchased especially to meet the needs of that shipper. In 1966 Holloway's operating revenue was $965,784 of which 71 percent was derived from the Goodyear account.

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The traffic managers of the Goodyear mills at Cedartown, Rockmart and Cartersville, Ga., on Friday of each week give Holloway a schedule of pickups for the following week. At Gadsden pickup orders generally are placed in the afternoon prior to the requested pickup, but at times on much shorter notice. Holloway holds out second day service in both eastbound and westbound operations on truckload shipments. About 60 percent of the shipments are truckload. Less-than-truckload shipments are accumulated until 12,000 to 18,000 pounds are available for transportation. Holloway's shippers are aware of this practice and have made no objection to it.

Eastbound Holloway transports grain, grain products, feed, etc. The shippers of these products call in their requirements

to the Topeka office from which the trucks are dispatched. The major portion of the eastbound backhaul is of flour from Kansas points to wholesalers and bakeries in Georgia and Alabama. Availability of equipment for this eastbound freight is dependent upon the westbound Goodyear shipments. In 1966 Holloway transported 2,550 shipments westbound and 1,800 eastbound. Six of the eastbound shippers who account for approximately 22 truckload shipments per week, appeared on behalf of the Holloway protest to urge the necessity of having Holloway's service available to them for the satisfactory movement of their products. They are completely satisfied with the service Holloway affords and they know of no other single-line service available to meet their needs. A considerable amount of their freight is comprised of agricultural commodities for which no certificate is necessary.

The Goodyear witness who supported the Bowman application for service to Kansas City and Topeka found the Holloway service satisfactory, but was fearful of what might happen if there was a change in ownership of Holloway. He admitted that if the Bowman application were granted it is likely he would divert 50 percent of the freight from Holloway to Bowman. All of the westbound and a large portion of the eastbound traffic of Holloway would be subject to diversion with the grant of the Bowman application.

Consolidated Freightways Corp. of Delaware (Consolidated)—and as Operator of Southern-Plaza Express, Inc. (Southern Plaza)—Menlo Park, Calif.

Protest:—The Bowman application especially for service between the Southwest and eastern areas such as between Houston, Fort Worth, Dallas and Kansas City in the southwest area and Washington, Baltimore, Wilmington, Philadelphia, Newark, Paterson, South Plainfield and New York City in the eastern area and extending on into Connecticut and Massachusetts.

Operations:—The Consolidated system maintains terminals at all of the above points except Washington and also at other points in Pennsylvania, New York, Connecticut and Massachusetts which are affected by this application. It operates as a general commodity carrier from coast to coast. In 1966 its operating revenue was just under $178 million with an operating ratio of 91.3 percent.

Interest:—From its terminals in Texas, Oklahoma and at Fort Smith, Ark. (Southwest division), to its Atlantic division (which embraces its terminals in the New York City area, Philadelphia, Baltimore, Wilmington, Wilkes-Barre and York), Consolidated transported about 9.3 million pounds of freight during the first 4 months of 1967. Westbound from the Atlantic division to the Southwest division it transported 13.8 million pounds during the same period. Consolidated has established service standards for its operations. Between Houston, Dallas and Fort Worth, on the one hand, and, Baltimore, Wilmington, Philadelphia and the northern New Jersey points on the other, Consolidated holds out a five day service, and a six day service between those southwestern points and New York City or Washington, D. C. For the year 1966 however, its on time performance under those standards ranged from a low of 4.1 percent (Fort Smith to Newark) to a high of 58.9 percent (Philadelphia to Dallas). This protestant is fearful that a grant of the Bowman application may resul' in a diversion of this Southwest-Atlantic division freight which is important to its system operations.

Illinois-California Express, Inc. (ICX)—Denver, Colo.

Protest:—The Red Ball and Strickland Applications.

Operations:—ICX is a common carrier of general commodities operating over a network of routes which extend between Chicago, St. Louis and Dallas on the east and Los Angeles on the west, traversing and serving points in the States of Illinois,

Iowa, Nebraska, Colorado, Texas, New Mexico, Arizona and California. Its authority between Dallas and Amarillo substantially duplicates that of Strickland and Red Ball; its authority also duplicates that of Red Ball in certain areas of New Mexico and Colorado. It operates 242 road tractors, 1,003 road trailers, and 1,015 local units and service vehicles. It maintains 76 terminals and stations throughout its system.

Interest:—ICX offers overnight service on less-than-truckload freight between Dallas, on the one hand, and, on the other, its direct service points in Texas as far west as Amarillo and Lubbock, and second morning delivery

on direct service points in New Mexico and Colorado. It interlines freight at Dallas with ETMF, Mercury Freight, Gordons, Herrin, Transcon, Red Ball, Braswell, Jones, Roadway and Strickland. Its interline volume at Dallas with ETMF and Mercury Freight is sufficient to warrant operating through trailer service. ICX also has arrangements with ETMF and Akers for through service with joint rates to the Eastern Seaboard and southeastern territories served by Akers.

ICX solicits the freight of five shippers located at Littleton, Denver, Colorado Springs and Pueblo, Colo., and Amarillo, Tex., who support the Red Ball application, and participates in the transportation of a portion of it. Revenue from the freight it handles between the points and gateways it serves in Texas, Colorado and New Mexico and points and gateways in the South or Southeast which applicants seek authority to serve is important to ICX for the continued operation and maintenance of its service facilities. A new competitive single-line service by Red Ball and Strickland as here proposed in competition with ICX and its connections through the Dallas, Amarillo, and Chicago gateways may cause some diversion of this valuable traffic.

Southwestern Transportation Company (SW Transp.)—Texarkana, Tex.

Protest:—All applications.

Operations:—SW Transp., a railroad affiliated motor carrier, is authorized insofar as this proceeding is involved to transport general commodities over routes in the States of Texas, Arkansas, Tennessee and Missouri extending between Dallas, Fort Worth, Waco and Shreveport on the south to Memphis on the east and St. Louis on the north, serving intermediate points including such points as Little Rock, Magnolia, Camden, Fordyce, Pine Bluff, Jonesboro, and Blytheville, Ark., and Tyler, Corsicana, Greenville and Jacksonville, Tex. It operates 108 road tractors, about 635 trailers of various types, and over 210 pieces of city and service equipment.

Interest:—SW Transp. handles most of its traffic moving between southwestern and southeastern points through its Memphis terminal. In December 1966 traffic representing $5,985 revenue was received from Bowman at Memphis and traffic representing $3,177 revenue was given to Bowman. In the same period traffic representing $2,575 revenue was received from Roadway and traffic representing $6,413 revenue was given to that carrier. SW Transp. restricts the handling of shipments of furniture to points on its own line because of difficulties it has experienced in interlining such freight with connecting carriers. It opposes these applications because it is of the opinion that it is able to perform adequate service in conjunction with its connections on freight moving between the southeast and southwest areas.

Alamo Express, Inc. (Alamo)—
San Antonio, Tex.

Protest:—Portions of the Bowman, Floyd & Beasley, Deaton, Baggett and Johnson applications.

Operations:—Alamo is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction with connecting long-haul carriers. Its operations extend generally between the Galveston-Texas City-Houston area on the east and Brownsville, Laredo and San Antonio on the west. It operates 118 road tractors, 238 semi-trailers of various kinds and 184 pieces of city equipment.

Interest:—Houston is the major interchange point on the east, and points within 15 miles of Houston have been served by Alamo for years. In addition, Texas City is a very important traffic producing point for Alamo. For example, in April 1967, Alamo originated 77 shipments weighing over 1.4 million pounds which produced a revenue for Alamo of $4,844. In addition Alamo delivers or originates much freight within 15 miles of Houston which it interlines at Houston with connecting carriers. Alamo is of the opinion that it is giving the public a reliable and expeditious service. It has large investments in equipment, terminals and other facilities which are not being operated to capacity and diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area.

Central Freight Lines, Inc. (Central)—
Waco, Tex.

Protest:—The Deaton application and portions of the applications of Bowman, Johnson, Floyd & Beasley and Baggett.

Operations:—Central is a common carrier of general commodities operating wholly within the State of Texas primarily as a

distribution and pickup carrier in conjunction with connecting long-haul carriers. Its routes extend generally between the Beaumont, Orange and Port Arthur area on the east, through the Houston-Galveston area to Brownsville on the south, and through central Texas to Wichita Falls and Denison on the north. It operates 418 tractors, 1,010 trailers of various types, 481 trucks, and 41 pieces of service equipment.

Interest:—Central interlines a considerable amount of traffic at such points as Houston and Dallas, much of which is moving to or from points on the routes of the carriers it protests. Competition from new single-line services as proposed by these applicants, particularly

in connection with points within the 15 mile radius of Houston and Dallas and such points as Port Arthur, Beaumont, Orange, Texas City, Smiths Bluff, Greenville and Garland, may divert some of this freight from Central Freight. The carrier has a large investment in facilities and equipment which are not being used to capacity. It is the position of Central Freight that with its connections it can offer a more reliable and expeditious service responsive to the needs of the public than can the applicants, and that diversion of this important traffic will result in impairing the quality of its service.

Red Arrow Freight Lines, Inc. (Red Arrow)—
San Antonio, Tex.

Protest:—The Deaton application and portions of the applications of Bowman, Floyd & Beasley and Baggett.

Operations:—Red Arrow is a common carrier of general commodities operating over routes wholly within the State of Texas extending between the Dallas and Fort Worth area and Houston, including points within 15 miles of each of these cities;

and also between Houston and points within 15 miles, on the one hand, and, on the other, Orange, Beaumont, Texas City, Port Arthur and Smiths Bluff. It operates 118 tractors and 297 trailers in over-the-road service, and 114 trucks, 36 tractors, and 40 trailers in city equipment.

Interest:—Red Arrow interlines freight particularly through the Dallas-Fort Worth and Houston gateways including freight moving to and from points in the East and Southeast served by the applicants it is protesting. Its position is substantially the same as that of Central Freight and Alamo.

Eagle Motor Lines, Inc. (Eagle)—
Birmingham, Ala.

Protest:—The Bowman and Floyd & Beasley applications.

Operations:—Eagle is an irregular route common carrier primarily of specific commodities operating over a large area of the United States. Over 95 percent of its shipments are in truckload quantities and 95 percent of the freight handled can be classified generally as iron and steel articles, pipe, or machinery. It operates about 336 tractors and 534 trailers including vans, flats, telescopic, converters, pole, lowboys, drop frames, I-beams, and refrigerated trailers. Approximately 80 percent of the tractors and 20 percent of the trailers are leased from owner-operators.

Eagle's authority which is in conflict with the protested applications embraces the transportation of general commodities from points in Georgia, Mississippi, and Tennessee to Birmingham and points within 10 miles thereof; iron and steel articles from Birmingham and points within 10 miles thereof to points in Georgia, Mississippi, Tennessee, Texas, Virginia and portions of Louisiana and Florida; contractors' equipment between

Bessemer and points in Alabama within 100 miles thereof, on the one hand, and, on the other, points in Georgia, Mississippi, Tennessee and portions of Louisiana and Florida; cotton gin machinery and parts and veneer mill lathes from Birmingham to points in Texas; fiber pipe and iron and steel articles from various points in Alabama including Birmingham to points in Arkansas and Oklahoma; trailers from Birmingham and Haleyville, Ala., and Collins, Miss., to points in the United States and of the same commodities from the destination area to Birmingham.

Interest:—It is Eagle's position that even though the applicants it is protesting may limit their extension applications to certain specific points in Texas, Kansas, Missouri, Mississippi or Arkansas, they become new competitors to many other points by virtue of improving their interline capabilities through the new gateways. Accordingly, Eagle noted some 14 million pounds of freight (mostly iron and steel articles) handled by it during May 1967 producing a revenue of $94,000 which it considered to be subject to possible diversion should the applications of Bowman and Floyd & Beasley be granted.

T.I.M.E. Freight, Inc. (T.I.M.E.)—
Lubbock, Tex.

Protest:—All applications.

Operations:—T.I.M.E. is a common carrier of general commodities operating over routes which extend between San Francisco and Los Angeles on the west, El Paso, Oklahoma City and Atlanta on the south, Kansas City, Chicago and Cincinnati on the north, and New York and Boston on the east. T.I.M.E.'s basic operations are (1) between Middle Atlantic and New England territory, on the one hand, and, on the other, the South, Midwest and West; (2) between the Midwest, on the

one hand, and, on the other, the South and Southeast; and (3) between the South and Southeast, on the one hand, and, on the other, the Southwest and West.

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It maintains 29 terminals at various key locations throughout its routes. It operates 513 road tractors, 1,304 road trailers, 412 city tractors, 376 city trailers, 206 straight trucks and 63 service vehicles. The only protective service offered is by portable heaters. In 1966 its operating revenue was over $57 million and its operating ratio 92.15 percent. Its average length of haul for all of its freight in March 1967 was 1,112 miles.

T.I.M.E. holds out to the public an overnight service on truckload and second day on less-than-truckload freight between Atlanta, on the one hand, and, on the other, Memphis, Little Rock, Springfield and Tulsa. From the eastern terminals such as Boston, New York, Philadelphia, Baltimore, York, Pa., to Memphis the holding out is second day on truckload and third day on less-than-truckload freight and that same service is also held out on the Atlanta to Oklahoma City freight. No evidence was presented as to actual performance under those schedules. Although authority to serve other points in Arkansas, Oklahoma and Missouri is held, T.I.M.E. serves only Little Rock and West Memphis in Arkansas, Oklahoma City and Tulsa in Oklahoma, and Springfield, St. Louis and Kansas City in Missouri, except for an occasional volume shipment. Freight destined to other points in those States which it is authorized to serve is interlined to other carriers for delivery.

Interest:—During the month of March 1967 it handled freight between its Atlanta terminal and other terminals here involved as follows:

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Terminals	No. Shipments	Pounds	Revenue
Atlanta to Memphis	2,185	1,537,247	$ 25,493.00
Memphis to Atlanta	1,576	1,397,890	19,623.29
	3,761	2,935,137	$ 45,116.29
Atlanta to St. Louis	2,091	1,271,326	$ 25,039.55
St. Louis to Atlanta	2,367	2,769,761	47,024.39
	4,458	4,041,087	$ 72,063.94
Atlanta to Chicago	775	507,052	$ 9,963.92
Chicago to Atlanta	1,185	1,054,277	23,794.45
	1,960	1,561,329	$ 33,758.37
Atlanta to Springfield	503	253,574	$ 6,566.74
Springfield to Atlanta	271	209,488	5,767.97
	774	463,062	$ 12,334.71
Atlanta to Kansas City	1,560	744,460	$ 21,929.70
Kansas City to Atlanta	1,027	845,637	21,629.23
	2,587	1,590,097	$ 43,558.93
Atlanta to Tulsa	1,033	529,695	$ 13,843.11
Tulsa to Atlanta	377	203,175	5,111.90
	1,410	732,870	$ 18,955.01
Atlanta to Oklahoma City	2,374	1,131,055	$ 32,862.56
Oklahoma City to Atlanta	588	713,102	17,843.84
	2,962	1,844,757	$ 50,706.40
Atlanta to Little Rock	1,259	695,563	$ 13,153.92
Atlanta to terminals west of Oklahoma City	5,306	4,109,805	$224,336.04
Terminals west of Oklahoma City to Atlanta	6,475	3,821,068	$229,803.27

During the month of March 1967, at Memphis T.I.M.E. interlined to Red Ball 4,097 shipments weighing over 3 million pounds producing revenue for Red Ball of $44,156.

This freight moved primarily to points in Texas and Louisiana from points in the northern, eastern and southern areas. It gave Herrin 1,070 shipments of similar traffic weighing 540,385 pounds and producing revenue for Herrin of $10,103. Traffic interlined to Southwestern Transp., ETMF and Gordons moved mostly from midwestern and eastern points to Texas points. T.I.M.E. gave SW Transp. 1,311 shipments weighing 809,935 pounds and $15,121 revenue. Its interline to ETMF during this period was 579 shipments weighing 449,034 pounds and producing revenue of $8,861; to Gordons 807 shipments weighing 419,223 pounds and producing revenue of $5,852. Its interline to Jones goes to Missouri and Arkansas points primarily and amounted to 1,583 shipments weighing 987,617 pounds and producing revenue to Jones of $15,856. Some of this latter traffic came from western origins. Protestant is of the opinion that a substantial portion of this freight now interlined at Memphis would be subject to diversion if the applications were granted.

Arkansas-Best Freight System, Inc. (ABF)—
Fort Smith, Ark.

Protest:—Roadway application.

Operations:—ABF is a common carrier of general commodities over a network of routes in the States of Wisconsin, Indiana, Illinois, Ohio, Missouri, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Mississippi and Tennessee. It maintains 36 terminals throughout its system, and operates 343 road tractors and 1,048 road trailers and 604 pieces of city equipment.
Interest:—ABF is opposed specifically to Roadway's proposed extension which would authorize a new service between New Orleans, on the one hand, and, on the other, the following midwestern points which both Roadway and ABF serve, namely, St. Louis, Chicago, Indianapolis, Akron, Cleveland, Columbus,

Dayton and Toledo. Freight moving between New Orleans and these terminals is very important to ABF, as is indicated by the following data for the year 1966:

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TO: New Orleans La.

FROM:	No. Shipments	Weight In Lbs.	ABF Revenue
Chicago, Ill.	14,136	20,753,743	$ 534,037.34
Indianapolis, Ind.	1,365	2,122,270	48,508.66
Akron, Ohio	3,027	5,390,633	153,099.15
Columbus, Ohio	2,870	3,885,428	109,301.79
Dayton, Ohio	1,732	3,149,884	74,162.62
Cleveland, Ohio	7,747	10,554,259	290,566.14
Toledo, Ohio	2,851	2,759,967	103.845.98
Total Southbound	33,728	48,616,184	$1,313,521.68

FROM. New Orleans, La.

TO:			
Chicago, Ill.	2,070	11,144,728	$ 170,829.14
Indianapolis, Ind.	371	1,905,200	27,437.58
Akron, Ohio	169	1,168,580	17,330.76
Columbus, Ohio	324	1,682,374	29,071.86
Dayton, Ohio	436	1,977,753	26,272.28
Cleveland, Ohio	832	1,960,506	46,149.51
Toledo, Ohio	279	689,027	14,665.67
Total Northbound	4,481	20,528,168	$ 331,756.80

On less-than-truckload freight ABF holds out to the public a third day service between New Orleans, on the one hand, and, on the other, St. Louis, Chicago, and Indianapolis, and a fourth day service between New Orleans and the five Ohio points. The service contemplates direct schedules, but when the volume of

freight is insufficient to load direct daily schedules between these terminals the freight is routed through a break-bulk terminal at Dayton, Ohio and/or Memphis. A summary of shipments handled between New Orleans and these terminals during a one week period in March 1966 discloses that ABF's on time performance to New Orleans under these schedules was 74 percent from Chicago, 29.8 percent from Indianapolis, 44.4 percent from Akron, 41.7 percent from Columbus, 72 percent from Dayton, 81.3 percent from Cleveland, and 17 percent from Toledo. In the northbound operation from New Orleans to the above terminals there were so few shipments moving during the one week test period that the figures are meaningless with the exception of service from New Orleans to Chicago which was a 36.6 percent on time performance.

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Thirteen Roadway witnesses testified on behalf of Roadway concerning their need for service between New Orleans and points which are on the route of ABF. A check of its records for the month of October 1965, disclosed that ABF had served six of these witnesses located at Cleveland, Columbus and Akron, Ohio, and New Orleans, La., handling a total of 69 shipments weighing an aggregate of 110,051 pounds and producing revenue for ABF of $3,823. Another company located at Barberton, Ohio supporting the Roadway application is a substantial shipper for ABF to Louisiana points. The company complains of slow transit time. A study of 81 shipments handled by ABF during August and September 1966 for this shipper from Barberton to Louisiana points shows on time delivery on about 61 percent of the shipments.

ABF regards Roadway as an aggressive and substantial competitor who would be successful in diverting traffic if its application to serve New Orleans were approved. Diversion of its traffic to Roadway will result in a reduction of ABF's direct

schedules between New Orleans and the involved terminals causing more of its freight to be handled through the break-bulk points and thus further slow down movement of its traffic.

Watson-Wilson Transportation System, Inc. (Watson-Wilson)[1]

Protest:—Bowman application.

Operations:—Watson-Wilson is a motor common carrier of general commodities over regular and irregular routes in the States of California, Arizona, New Mexico, Colorado, Nebraska, Kansas, Iowa, Minnesota, Illinois, Tennessee, Georgia and South Carolina. It maintains 30 terminals throughout its system and operates in line-haul service 368 tractors and 631 trailers including vans, open tops and refrigerated units. Its operating revenue for 1966 was over $35 million. That of Yellow Transit was nearly $56 million.

Interest:—Watson-Wilson's interest concerns pirmarily service between Kansas City and Topeka, on the one hand, and, on the other, points in Tennessee, Georgia and

South Carolina. Between its Kansas City terminal, on the one hand, and, on the other, its terminals in Chattanooga, Tenn., Rome, Atlanta and Augusta, Ga., and Greenville and Charleston, S. C., during the first four months of 1967 it transported 10,130 shipments weighing 13,561,657 pounds and producing

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[1] At the time of the hearing Watson-Wilson was controlled by Yellow Transit Freight Lines, Inc. Subsequently, the Commission approved merger of Watson-Wilson into Yellow Transit Freight Lines, Inc., 104 M.C.C. 737, which transaction was consummated December 9, 1968. The name of the surviving corporation has been changed to Yellow Freight System, Inc.

revenue of $335,466. By far the largest portion of this freight moved between Atlanta and Kansas City with substantial tonnage also moving between Kansas City and the Chattanooga and Greenville terminals. During the same four month period Watson-Wilson found that it had transported freight for seven of the shippers who testified in support of the Bowman application from Kansas City to points in Tennessee, Georgia and South Carolina for delivery to consignees or interlined to other carriers. These totaled 230 shipments weighing 383,713 pounds and produced revenue of $12,729.

In a one week test period in March 1967, Watson-Wilson transported 269 shipments from its Atlanta terminal to Kansas City for delivery to consignees or connecting carriers. These shipments weighed 312,313 pounds and produced revenue of $8,875. Seventy-eight percent of the shipments were delivered within 3 days of the billing date at Atlanta and 96 percent within four days. During the same test period 84 shipments were transported from the Chattanooga terminal to Kansas City weighing 78,720 pounds and producing revenue of $2,123. Seventy-one percent of these shipments were delivered within three days from the Atlanta billing date and 93 percent within four days. From the Greenville terminal there were 42 shipments to Kansas City during the period weighing 29,792 pounds and producing revenue of $967. Forty-eight percent were delivered within three days and 86 percent within four days. During that period 17 shipments were handled from the Augusta terminal to Kansas City, 15 from the Rome terminal and 5 from the Charleston terminal. These 37 shipments weighed an aggregate of 75,491 pounds and produced revenue of $2,242. Thirty-eight percent were delivered within three days of the billing date and 89 percent within four days.

Bowman is one of Watson-Wilson's primary interline carriers in the southeastern area. The protestant is of the opinion that the granting of the Bowman application will jeopardize

the traffic it now has between Kansas City and Topeka, on the one hand, and Atlanta and points in the southeastern area on the other.

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Trans-Cold Express, Inc. (Trans-Cold)—
Irving, Tex.

Protest:—All applications.

Operations:—Trans-Cold is a common carrier of specific commodities, primarily various kinds of food products, operating between numerous points and areas within the United States. Its general office is at Irving (Dallas), Tex., and it also maintains offices at Brownsville, Tex., Norwalk, Calif., Chicago, Ill., Wichita, Kans., Somerville, Mass., and Jersey City, N. J. It operates 21 pieces of city and service equipment, 153 road tractors and 176 road trailers. All trailers are mechanically refrigerated. It maintains refrigerated storage facilities at Irving and at Jersey City. The preponderance of the company's operation is between the Southwest and East, and from the Southwest to the Southeast. Its primary customers are large chain stores, warehouses, various of the larger foodstuffs manufacturers, and meatpackers.

Interests:—Trans-Cold transports substantial quantities of freight requiring protective service from the East to the Southwest, from the Southwest to the East, and from the Southwest to the Southeast (but not in the reverse direction) which it believes may be subject to diversion should these applications be granted. To a much lesser extent there is a possibility of some diversion of its freight moving between the East and West. During the month of May 1967, Trans-Cold transported 254 shipments weighing over 4 million pounds from points in New York, New Jersey, Ohio, Connecticut, Massachusetts and Pennsylvania primarily to points in Texas with some shipments going to points in Oklahoma, Arkansas, and Missouri. In the

same period Trans-Cold transported 94 shipments weighing about 2.5 million pounds from the Southwest (all from Texas except one shipment from Oklahoma and one from Arkansas) to points in New York, New Jersey, Maryland, Massachusetts, Connecticut, Pennsylvania and Virginia. During the same period 70 shipments weighing about 2.3 million pounds were transported from points in Texas and New Mexico to points in Alabama, Florida, Georgia, and the Carolinas. From eastern origins to western destinations (Arizona, Utah, Oregon and Washington) in this period Trans-Cold transported 114 shipments weighing 1.4 million pounds.

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The great majority of the freight handled by Trans-Cold is in truckload quantities. At Irving, however, it does accumulate shipments of less-than-truckload quantities from Texas origins, and approximately 3 times a week dispatches loads containing such less-than-truckload shipments for southeast and eastern destinations.

Trans-Cold opposes the granting of any authority that may result in a diversion of any of the above freight from its operations.

Missouri Pacific Railroad Company (MoPac)—

The Texas & Pacific Railway Company (T&P)—

Missouri Pacific Truck Lines, Inc. (MPTL)—

The Texas & Pacific Motor Transport Company (T&PMT)—

Protest: All applications except Roadway and Herrin.

Operations:—MoPac controls T&P and they are being jointly operated pursuant to authority of this Commission. Their re-

spective motor carrier affiliates are wholly owned subsidiaries of the parent rail companies. These motor carriers operate over regular routes in the States of Texas, Arkansas, Louisiana, Mississippi, Tennessee, Missouri, Kansas and Nebraska, paralleling the railroad operations to a considerable extent. They operate regular schedules over the system which embraces approximately 17,000 miles of routes, serving approximately 1,700 cities, towns and villages. They maintain major terminals at 30 cities in Texas, 15 in Arkansas, 12 in Louisiana and 11 in Kansas, and together operate about 456 tractors, 542 trailers, and 220 city units.

Interest:—MPTL and T&PMT conduct substantial operations over their routes serving the points authorized, and the traffic generated at the points served locally is vitally important to continuation of their operations. They interline freight with other carriers including some of the applicants. During May 1967, they received 90,508 pounds of freight from Bowman at Memphis producing revenue of $2,122. In the same month they interlined to Bowman 156,251 pounds of freight for a revenue of $1,613. They also interlined to Deaton at Memphis 176 pounds of freight with a revenue of $2.43 during the month. During this same period at New Orleans they interlined freight with Deaton, Baggett, Johnson and Strickland aggregating 475,202 pounds and producing revenue of $4,912.

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These four protestants are of the opinion that the granting of these applications will not result in the development of any new traffic, but will serve only to dilute traffic and revenue of existing carriers operating in this particular area, and make it more difficult for them to give an adequate and dependable service to the public. These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them.

Red Line Transfer & Storage Company, Inc. (Red Line)— Pine Bluff, Ark.

Protest:—The Red Ball, Strickland, Bowman and Jones applications.

Operations:—Red Line is a motor common carrier of general commodities operating daily schedules over regular routes out of Memphis, Tenn., Little Rock, Ark., and Greenville, Miss., into all of southeastern Arkansas, and to Monroe and Bastrop, La., with return schedules the same day, but restricted against service between Memphis and Little Rock or between Memphis and Greenville. It maintains 10 terminals on its routes and two call stations. Red Line operates 33 tractors, 60 trailers and 38 pickup trucks. Its operating revenue in 1965 was $1.5 million and its operating ratio was 99.1 percent. It interlines freight at Little Rock, Memphis, Pine Bluff, Crossett, Monroe, and Greenville, including interline with the applicants here protested at one or more of the points.

Interest:—During the months of October, November and December, 1966, Red Line received in interline service at Memphis for delivery at points on its routes about 1,000 shipments which originated at or moved through Atlanta or Birmingham and which produced revenue for Red Line of approximately $8,000. Of these shipments 53 were received from Bowman aggregating 34,868 pounds.

During a three day period (June 6, 7 and 8, 1967) Red Line interlined with Strickland at Little Rock 42 shipments weighing 118,377 pounds and producing revenue for Red Line of $726 and for Strickland of $1,550. Red Line has interlined such freight with Strickland at Little Rock for the past 10 years.

During a one week period May 1 through May 8, 1967, Red Line originated 44 shipments at Memphis which it trans-

ported to Lake Village, Ark., producing total revenue of $429. No interline freight is included. This is a daily operation, the truck being routed through Pine Bluff to pick up intrastate shipments from that area going to Lake Village inasmuch as there is insufficient

freight for a direct schedule from Memphis. In the same period 39 interstate shipments were originated by Red Line at Lake Village producing a revenue of $164. It also originated 27 shipments at Greenville, Miss., producing a revenue of $205. During the same week Red Line originated 84 interstate shipments at Crossett, Ark., which were interlined to connecting carriers or delivered by Red Line at Memphis, Little Rock or Monroe and which produced revenues for Red Line of $2,597.

Red Line is of the opinion that a diversion of any of this freight would jeopardize its ability to continue a daily service between its terminal points and serving the intermediate and off-route points. Red Line's present competition for the Lake Village traffic are ABF, Campbell Sixty-Six, Atlas Transit, and MoPac.

A. & H. Truck Line, Inc. (A&H)—Evansville, Ind.

Protest:—Roadway.

Operations:—A&H is a motor common carrier of general commodities operating over regular routes which extend between Chicago, Indianapolis and Cincinnati on the north, and Memphis on the south, and between Cincinnati on the east, and St. Louis on the west, serving certain intermediate and off-route points. It maintains terminals at 15 points on its routes, and interlines traffic as well as equipment with numerous connecting carriers at 12 of these terminals. It operates 233 tractors, 430 trailers, and 92 city trucks and 12 service vehicles.

Interest:—During a one week test period in March 1967, A&H handled through interline at Memphis 254 shipments weighing 722,627 pounds which either were destined to or originated at points on the new routes proposed to be served by Roadway. Projected on an annual basis this would amount to over 13,000 shipments aggregating some 37.5 million pounds of freight, all of which would be subject to diversion to Roadway for either single-line or joint-line service. A&H interlines the freight here involved at Memphis primarily with Braswell, Campbell Sixty-Six, Gordons, Herrin, Red Ball, Ryder, Viking and West Bros. (now controlled by Roadway). A&H also interlines to some extent with Roadway at Memphis but not on the traffic here involved.

A&H finds Roadway a financially strong and aggressive competitor and the possibility of diversion of this competitive traffic is very real.

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Viking Freight Company (Viking)—St. Louis, Mo.

Protest:—Roadway.

Operations:—Viking is a common carrier of general commodities operating over a network of regular routes that extend between Chicago on the north, Cleveland, Cincinnati, and Nashville on the east, Fort Worth, Oklahoma City and St. Louis on the west, and New Orleans on the south. The protest of the Roadway application relates specifically to Viking's operations between New Orleans and points in Mississippi, on the one hand, and, on the other, Chicago, Ill., Cleveland, Akron, Columbus, Cincinnati, and Dayton, Ohio, Indianapolis, Ind., Nashville, Tenn., and St. Louis, Mo. Viking maintains 25 terminals over its routes including 6 in Mississippi, 4 in

each Ohio and Illinois, 3 in Tennessee, 2 in each Oklahoma and Texas, and 1 each in Indiana, Kentucky, Louisiana and Missouri. It operates 211 road tractors, 746 road trailers of various types, and in city work 236 tractors, 221 trailers, and 87 straight trucks.

Interest:—Viking has 650 regular customers at Chicago, 340 at Cincinnati, 150 at Cleveland, 70 at Columbus, 80 at Dayton, 130 at Indianapolis, 95 at Nashville, 330 at St. Louis and 230 at New Orleans. It holds out to the public a third day service between Cleveland and Columbus, on the one hand, and, New Orleans on the other, and second day between New Orleans, on the one hand, and, on the other, Cincinnati, Dayton, Indianapolis, Chicago, Nashville and St. Louis. No data was presented to show actual performance under this holding out. It transports substantial tonnage between these terminals as is disclosed by the following data for the year 1966:

	To New Orleans		From New Orleans	
	Weight (Pounds)	Revenue	Weight (Pounds)	Revenue
Chicago	16,929,000	$ 477,482	7,662,000	$134,203
Cincinnati	6,828,00	180,065	4,444,000	66,555
Cleveland	5,981,000	189,082	1,493,000	34,294
Columbus	3,374,000	102,939	6,381,000	81,065
Dayton	7,543,000	213,374	6,740,000	83,468
Indianapolis	10,907,000	298,396	8,096,000	92,862
Nashville	7,063,000	141,483	10,012,000	138,052
St. Louis	17,366,000	407,733	11,030,000	170,246
Totals	75,991,000	$1,980,054	55,858,000	$800,745

Granting of the Roadway application will enable that carrier to compete directly in single-line service with Viking for the above traffic and in addition, it will enable Roadway to serve in 2-line service many additional points in Louisiana and Mississippi, some of which Viking serves in single line and some in 2-line service. Viking considers ABF as its only competitor at present between New Orleans and the Columbus-Cleveland-Indianapolis area.

Gordons Transports, Inc. (Gordons)—
Memphis, Tenn.

Protest:—All applications.

Operations:—Gordons is primarily a regular route general commodity carrier with authorized routes extending between Chicago and St. Louis on the north, New Orleans, Gulfport and Mobile on the south, Atlanta, Ga., on the east, and Dallas, Fort Worth, Fort Smith and Kansas City on the west. It is authorized to conduct single-line operations between Atlanta, Ga., and Birmingham, Huntsville and Decatur, Ala., on the one hand, and, on the other, Memphis, Kansas City, St. Louis, Chicago, Dallas, Fort Worth, Little Rock, Fort Smith and the Mississippi points of Greenville, Greenwood, Cleveland and Indianola; also between Chicago and St. Louis, on the one hand, and, on the other, Jackson and Gulfport, Miss., and Baton Rouge, New Orleans and other Louisiana points. It maintains 17 company terminals and 5 agency

terminals throughout its system. It operates 309 tractors, 815 trailers of various types, and 812 city equipment units. In 1966 its operating revenue was about $31.4 million with an operating ratio of 91.8 percent.

Gordons is predominantly a less-than-truckload carrier. In 1966, it transported 1,674,816 less-than-truckload shipments and 26,758 truckload shipments. Of the less-than-truckload shipments handled, 40.1 percent were minimum rated and 71.8 percent weighed less than 500 pounds. The less-than-truckload shipments accounted for 72.6 percent of its operating revenue. 68.8 percent of the total shipments were transported in joint-line service producing 55.2 percent of the revenue. Gordons interlines freight with short-line operators at its major terminals which freight originates at or is terminated at numerous points Gordons is authorized to serve. This is especially true where the volume of freight fails to warrant daily schedules, and accumulation of an adequate volume would result in delay in handling the freight.

In like manner, Gordons may operate a certain number of schedules between terminals daily, but if there is insufficient freight to warrant dispatching one of the schedules the freight may be held a day for additional freight to round out the trailer load. In this connection Gordons considers traffic volume as the key to establishing service standards. Where there is sufficient freight to load a through trailer to destination the freight moves faster than if loaded to a break-bulk point. In some instances it is advantageous both from the standpoint of economy and service to use every-other-day through schedules rather than daily schedules over a break-bulk point.

Gordons has established certain service standards which it holds out to the public. It has found that there are very few complaints regarding service if freight is delivered not more than one day beyond the service standard. These standards as pertinent to operations here considered include second day service from Atlanta to Dallas, and from Chicago and St. Louis to Atlanta and Birmingham; third day service from Kansas City to Atlanta and Birmingham, from Birmingham to Dallas, and from Chicago to Baton Rouge, New Orleans, other Louisiana points, Gulfport and Mobile. An examination of Gordons'

records for a one week test period in May 1966, covering 5,694 shipments handled between the above points[2]

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disclosed "on time" performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard.

The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. An analysis of its traffic for the year 1966 discloses that at its Atlanta terminal 89.6 percent of the outbound and 95.1 percent of the inbound freight is involved in these proceedings, and is subject to diversion if these applications are granted; at Baton Rouge 83.5 percent of the outbound and 81.2 percent of the inbound freight is involved; at Birmingham 98 percent of the outbound and 98.5 percent of the inbound freight is involved; at Dallas it is 24.8 percent of the outbound and 43.7 percent of the inbound freight; at Gulfport 89.7 percent of the outbound and 90.6 percent of the inbound freight; at Jackson 59 percent of the outbound and 54.4 percent of the inbound freight is involved; at Kansas City 42.1 percent of the outbound and 44.3 percent of the inbound freight is involved; at Mobile 86 percent of the outbound and 91.2 percent of the inbound is involved; at New Orleans 69.5 percent of the outbound and 87.7 percent of the inbound freight is involved.

Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. Gordons serves many of the shippers who testified in these proceedings on behalf of certain

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[2] Excludes bills with no delivery date, and those involving unusual circumstances such as "will call" shipments, COD's or order notify shipments, and redeliveries.

of the applicants. Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles a total of 1,045,560 miles, much of it between points involved in these applications.

Supporting Gordons' Protest

Five motor carriers who were not themselves protestants in these proceedings testified in support of Gordons' protest. Ellis Trucking Company, Inc., of Indianapolis, Ind., operates as a common carrier of general commodities over regular routes extending between Memphis, on the one hand, and, on the other, numerous points in Kentucky, Indiana, Ohio and Michigan, with terminals at Memphis, Tenn., Cincinnati and Dayton, Ohio, Indianapolis, Anderson, Marion, and Fort Wayne, Ind.,

Detroit, Pontiac, Flint, Saginaw, Lansing and Jackson, Mich. Its operating revenue for 1966 was over $12 million. Roadway serves all the above points. At Memphis Ellis interlines primarily with Gordons, Braswell and Herrin. In May 1967 Ellis from the above terminals interlined at Memphis 1,573 shipments weighing over 2 million pounds destined to New Orleans, Baton Rouge, Mobile, Gulfport and Biloxi. All of this freight would be subject to diversion to the proposed Roadway single-line service.

Southern Forwarding Company of Memphis is a motor common carrier of general commodities operating over regular routes in Tennessee and Kentucky primarily between Louisville and Memphis via Nashville. Its operating revenue for 1966 was over $1.7 million. In January 1967 Southern Forwarding handled 40 shipments weighing 121,860 pounds from Louisville

destined to New Orleans and 60 shipments weighing 46,494 pounds from Louisville destined to Baton Rouge which were interlined at Memphis. This traffic would be subject to diversion to Roadway. Also subject to diversion to Bowman would be freight from Nashville to New Orleans and Baton Rouge.

Mid-South Transports, Inc., of Memphis, is a motor common carrier of general commodities in the State of Tennessee operating generally between Memphis and Nashville and between Memphis and Clarksville serving various intermediate points. Its operating revenue for 1966 was approximately $2.5 million. In the first three months of 1967 Mid-South originated 121 shipments weighing 296,141 pounds at Clarksville, Tenn., destined to points proposed to be served by Roadway and during the same period 94 shipments weighing 40,610 pounds at Nashville destined to the same Gulf Coast area. This freight was interlined to connecting carriers at Memphis. The two shippers of this freight testified in support of the Roadway application and the freight would be subject to diversion by that carrier. Similarly, during the period from October 10 to October 22, 1966, Mid-South participated in the movement of 121 shipments weighing 117,295 pounds between points in Tennessee and Kentucky including Nashville and Clarksville, on the one hand, and, on the other, points in Louisiana and Mississippi which also would be subject to diversion.

Wilkerson Freight Lines, Inc., of Moss Point, Miss., is a common carrier of general commodities operating over a regular route between Pascagoula, Miss., and Mobile, Ala., serving all intermediate points and the off-route point of Escatawpa. It operates 9 tractors and

16 trailers. Less-than-truckload traffic is handled on its own equipment. Truckload freight for the International Paper Company plant at Moss Point, Miss., is handled in conjunction with

Bowman, Gordons, Cole and Mercury Freight using the connecting line's trailer with the interline being made at Mobile. Forty-five to 60 percent of its traffic is handled for International Paper Company. That company testified on behalf of the Johnson and Bowman applications.

Atlas Transit, Inc., of Little Rock, Ark., is a motor common carrier of general commodities operating over a network of regular routes in Arkansas between West Memphis, Little Rock, El Dorado, Texarkana, Arkadelphia, Pine Bluff, Hot Springs, Conway, Fort Smith, Fayetteville and Springdale. It maintains 15 terminals throughout its routes and operates 19 road tractors, 77 road trailers and 28 city pickup vans. On freight moving to or from Memphis Atlas purportedly interlines with Powell Truck Lines on a through unit and one carrier (for rate purposes) basis. Jones, Herrin, Strickland and Red Ball all operate in Arkansas and Bowman proposes operation in Arkansas. Atlas handles a substantial amount of interstate freight through interline especially at West Memphis and Little Rock. This freight is essential to the continued operation of various terminals which provide a necessary service to many small cities and communities in Arkansas. A shift in the interline point from Memphis to Little Rock would either divert freight entirely from Atlas or substantially reduce its portion of the operating revenue.

Mercury Motors Incorporated (Mercury Motors)—
Fort Smith, Ark.

Protest:—The Bowman application (also appeared as a witness for Gordons in support of their protest of the Jones, Red Ball and Strickland applications).

Operations:—Mercury Motors is a common carrier of general commodities operating over regular routes between Memphis and Fort Smith by way of Little Rock, and between Mem-

phis and Snow Lake, serving intermediate points and certain off-route points; also over irregular routes between Memphis on the one hand, and points in the west central portion of Arkansas on the other. Its 1966 operating revenue was over $2.7 million. It maintains terminals at Memphis, Forth Smith, Little Rock and Helena.

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Interest:—During 1966 Mercury Motors received from Bowman in interline service at Memphis 1,408 shipments weighing 1,258,021 pounds and producing revenue for Mercury Motors of $14,228. During the same period it interlined to Bowman at Memphis 231 shipments weighing 1,079,150 pounds and producing revenue for Mercury Motors of $8,764. This freight is subject to diversion to Bowman should the Bowman application be granted.

Mercury Motor Express, Inc. (Mercury MX)—
Tampa, Fla.

Protest:—The Roadway application.

Operations:—Mercury MX is a motor carrier of general commodities between points in Florida, Georgia and South Carolina, on the one hand, and, on the other, points in numerous eastern States including those of particular interest in this proceeding, namely, Connecticut, Massachusetts, Rhode Island, New York (on and south of Highway 7), New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia and North Carolina. Mercury MX's operating revenue in 1966 was over $13 million. It maintains 34 terminals throughout its territory including 13 in Florida.

Interest:—Mercury MX's Pensacola terminal is responsible for approximately $445,000 of the $13 million operating revenue in 1966. Mercury MX holds out a 3-day service between

Pensacola and points in the eastern States and operates sleeper equipment manned by two-man teams to meet this schedule. No evidence was offered of the actual performance under that holding out. It has need for additional freight in the Pensacola area. Substantially all of its traffic moving to or from the Pensacola terminal would be subject to diversion with the granting of the Roadway application.

Carolina Freight Carriers Corporation (Carolina)—Cherrydale, N. C.

Protest:—The Roadway application.

Operations:—Carolina is a common carrier of general commodities and as here involved operates between all points in Florida, on the one hand, and, on the other, points in numerous eastern States as far north as Massachusetts and west to Chicago and Ohio points. It maintains 28 terminals and 21 call stations in that territory and operates 202 pickup trucks, 718 tractors and 1,268 trailers.

Interest:—Carolina protests especially the Roadway proposal to serve Pensacola, Fla., which Carolina is authorized to serve. Carolina does not maintain a terminal at that point although it does have four terminals and four call stations in Florida. The evidence does not indicate what volume of freight is handled by this protestant which may be affected by the Roadway application.

Akers Motor Lines, Inc. (Akers)—Gastonia, N. C.

Protest:—All applications.

Operations:—Akers is a common carrier of general commodities operating over an extensive network of routes between points

in Georgia, South Carolina, North Carolina and on up the East Coast through Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. It maintains terminal facilities at 85 cities and operates 183 trucks, 552 tractors, and 1,102 trailers of various types.

Interest:—Interline traffic is a vital part of the Akers operation and any diversion of such freight from its lines by virtue of these applications will be detrimental to the carrier and impair the quality of service it is able to give to the public. Akers restricts the application of through rates to not more than a 2-line haul on truckloads and a 3-line haul on less-than-truckload freight, and in the latter instance only when Akers is the intermediate carrier.

M. R. & R. Trucking Company (MR&R)—Crestview, Fla.

Protest:—The Roadway application.

Operations:—MR&R is a common carrier of general commodities operating over regular routes generally between Pensacola and Mobile on the west, Atlanta on the north and Jacksonville on the east. It operates 80 pickup trucks, 67 tractors and 129 trailers. It maintains seven terminals and seven agency stations in the area served.

Interest:—In 1966 MR&R's Atlanta-Pensacola freight constituted 9 percent of the total weight of all shipments handled and produced 12.1 percent of its total operating revenue. In the first five months of 1967 this freight represented 19.6 percent of the total weight and 14.1 percent of the total operating revenue of the carrier. This important segment of its freight

will be subject to diversion if the Roadway application is granted. MR&R interlines a substantial amount of freight with

Roadway. For example, in a 2-week period in October 1966, MR&R received a total of 130 shipments from Roadway at Atlanta weighing 162,192 pounds. An analysis of the freight handled from the Atlanta area to the Pensacola area in a one week period in April 1967 disclosed that of 589 shipments handled 83 percent were handled in one day and 94.5 percent within 2 days. Of the shipments which failed to receive next day delivery, 42 were held for specific reasons. MR&R is of the opinion its service is satisfactory and a dilution of freight will be disastrous especially considering the pronounced imbalance of freight southbound. If Roadway is in a position to offer single-line service to shippers in the Pensacola area it will seriously affect the ability of MR&R to continue in business without this important northbound freight which it interlines at Atlanta.

Mercury Freight Lines, Inc. (Mercury Freight)—Mobile, Ala.

Protest:—All applications.

Operations:—Mercury Freight is a common carrier of general commodities operating between Birmingham on the north, Mobile and Pensacola on the south, Beaumont, Houston, Dallas and Fort Worth on the west. By certificate dated May 24, 1968, in No. MC-113528 (Sub-No. 12), Mercury Freight is authorized to serve as intermediate and off-route points Baton Rouge, and points within 15 miles thereof, Lake Charles and points within 15 miles thereof, Bay Minette and Jackson, Ala., and Picayune, Miss., and the NASA test site near there. It maintains terminals at Birmingham, Selma, Mobile, Pensacola, Dallas, Fort Worth, Beaumont and Houston. It operates 82 tractors, 168 trailers and 48 pickup trucks. Its 1966 operating revenue was over $4.8 million. In that year it handled 267,109 less-than-truckload shipments and 8,152 truckloads. In 1966, 20 percent of Mercury Freight's total tonnage was local to its line, 66 percent was inter-

line freight either originating or terminating on its lines, and 14 percent was interline freight where Mercury Freight was a bridge carrier. Thus, 80 percent of its freight is interline, including such service with some of the applicants.

Mercury Freight holds out to the public next day delivery between Birmingham and Mobile and between Birmingham and Pensacola; second day service between Birmingham and Houston, Birmingham and Dallas, Mobile and Houston and Mobile and Dallas. Its on time performance

under those schedules as determined by records of 7,885 shipments covering a number of one week periods during 1966 ranges from a low of 76.4 percent to a high of 93.8 percent. It also holds out a second day joint-line service between Atlanta and Houston or Dallas.[3] Mercury Freight is not operating to capacity and is in need of additional freight. In the period from July to December 1966, Mercury Freight dispatched 86 empty trailers from its Pensacola terminal for lack of outbound freight. Similarly, it dispatched 127 empty trailers from Houston for lack of traffic in that six month period. In 1966, 99.2 percent of the individual shipments handled by Mercury Freight were free from any claim for loss or damage and from a revenue standpoint the claim ratio of the company was 1 percent.

Interest:—Aside from added competition with its extensive joint-line services which these applicants propose, Mercury Freight's single-line service will be duplicated by one or more of these applications. For example, six of the applicants proposed to duplicate Mercury Freight's single-line service between Birmingham and Dallas, Birmingham and Houston, Birmingham

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[3] In No. MC-F-9918, *Mercury Freight Lines, Inc.—Purchase (Portion)—Sam N. Cole* (not printed), decided April 11, 1969, Mercury Freight was authorized to acquire by purchase operating rights extending its authority between Birmingham and Atlanta.

and Beaumont, and Birmingham and Fort Worth. Between Mobile and Dallas, Mobile and Houston, Mobile and Beaumont and Mobile and Fort Worth, four of the applicants propose single-line service duplicating that of Mercury Freight. Between Pensacola and Dallas, Pensacola and Houston, Pensacola and Beaumont, Pensacola and Fort Worth, two applicants proposed single-line service duplicating that of Mercury Freight. And between Selma, on the one hand, and, on the other, Dallas, Houston, Fort Worth and Beaumont, one of the applicants is proposing a new single-line service duplicating that of Mercury Freight.

As previously mentioned Mercury Freight interlines substantial traffic with several of the applicants. In 1966 Mercury Freight interlined to Roadway at Birmingham 1,494 shipments weighing over 2.4 million pounds moving to points in the Roadway system, and received from Roadway 7,588 shipments weighing over 4.9 million pounds. It interlined to Bowman at Birmingham

3,692 shipments weighing over 7.3 million pounds and received from Bowman 2,293 shipments weighing 7.2 million pounds. It interlined to Johnson at Mobile 194 shipments weighing 414,498 pounds and received from Johnson 2,119 shipments weighing 1.6 million pounds. Mercury Freight gave Baggett at Birmingham 4,006 shipments weighing over 4 million pounds and received from Baggett 1,464 shipments weighing over 2 million pounds. It gave Floyd & Beasley 141 shipments weighing 76,904 pounds and received from Floyd & Beasley 2,985 shipments weighing over 1.7 million pounds. It interlined to Deaton for the year 935 shipments weighing over 1 million pounds and received from Deaton 866 shipments weighing 514,165 pounds. It gave Red Ball at Mobile 326 shipments weighing 411,909 pounds and received from Red Ball 43 shipments weighing 79,613 pounds. This freight totaling for the

year 1966, 17,358 shipments weighing over 18 million pounds is subject to diversion. Mercury Freight has handled the freight of at least 57 of the witnesses testifying in this proceeding. The witness for Mercury Freight also noted that for 100 of the witnesses testifying on behalf of certain of the applicants who ship or receive freight at points within Mercury Freight territory, a check of its records for periods ranging from six months to a year during 1966 failed to disclose that any of them tendered a shipment to Mercury Freight.

Howard Hall Company, Inc. (Howard Hall)—Birmingham, Ala.

Protest:—The Bowman application.

Operations:—Howard Hall is a motor common carrier of general commodities operating over irregular routes between Birmingham and points within 65 miles thereof and Montgomery, Ala., on the one hand, and, on the other, points in Georgia south of U. S. Highway 80 and through Tampa to the East Coast. It maintains terminals at Birmingham, Jacksonville, Orlando, Pensacola and Tampa from which the surrounding areas are served by peddle runs. Pickup and delivery service is performed for Howard Hall by cartage agents at Daytona Beach, Gainesville, Lake City, Melbourne, Ocala, Panama City, and Tallahassee, Fla., and Anniston, Gadsden, Montgomery, and Tuscaloosa, Ala. The company operates 187 trailers of various types, 41 tractors and 27 trucks used in pickup and delivery work, and 64 road tractors. In 1966 it transported 170,288 less-than-truckload shipments and 10,172 truckload shipments and its operating revenue was over $3.7 million.

Interest:—In a 12-month period (July 1, 1966-June 30, 1967) Howard Hall's operation between Birmingham and Pensacola produced some $405,000 operating revenue or approximately

10 percent of its total operating revenue. It considers this freight to be subject to diversion by the proposed new Bowman service which will elminate the circuity involved in its present authority to perform such service. In addition, Bowman is proposing a new service to many points now served by carriers with which Howard Hall interlines freight at Birmingham. This freight also would be subject to diversion to the proposed new single-line Bowman service.[4]

West Brothers, Inc. (West)—
Hattiesburg, Miss.

Protest:—The Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman and Johnson applications.

Operations:—West is a motor common carrier of general commodities operating primarily over regular routes extending between Birmingham, Montgomery, and Mobile, Ala., on the east, New Orleans on the south, and Memphis on the north, the latter point being subject to certain restrictions. Its routes are concentrated in the southern half of Mississippi, and include among its 167 service points in Mississippi, Alabama, and Louisiana such major cities as Jackson, Hattiesburg, Laurel, McComb, Brookhaven, Biloxi, Gulfport, and Pascagoula, Miss., Birmingham, Montgomery, and Mobile, Ala., and New Orleans and surrounding points in Louisiana.[5] It operates 14 terminals within this area. In 1966 its operating revenue was over $6 million. In its business West operates 100 road tractors, 298 trailers, and 123 pieces of city equipment.

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[4] Through its purchase of a portion of the operating rights of Alabama Highway Express, Inc., No. MC-F19921, consummated August 15, 1968, Bowman now holds operating authority substantially duplicating that of Howard Hall, thus eliminating the basis of this protest.

[5] Subsequent to this hearing West has received authority to extend its operations to Natchez, Miss., and Baton Rouge, La., subject to certain restrictions. Also subsequent to this hearing applicant Roadway has acquired control of West.

Interest:—Of the 167 towns that are served directly by West only 58 will not be affected by these applications and those are primarily very small communities, the total population of which aggregates only 59,516. Interline freight is an important segment of West's operations and a considerable amount of interline traffic is handled

with these applicants. For example, in a two week period in October 1966, West received over 1.9 million pounds of freight from the 7 applicants it is protesting which it considers subject to diversion. During the first six months of 1967, 53.8 percent of all West's traffic was interlined and 46.2 percent was local to its own lines. Of the interline freight it handles West is of the opinion that from 85 to 90 percent is subject to diversion by these applications. West believes it is rendering a satisfactory and essential service to the public. In a one week period in October 1966, West handled some 6,699 shipments which purportedly would be affected by one or more of these applications. These shipments originated or were interchanged at New Orleans, Jackson, Mobile, Gulfport, Hattiesburg, Laurel, Meridian, Pascagoula, Birmingham, Memphis and Montgomery. 49.3 percent of the shipments were delivered to the consignees or to connecting carriers within one day and 93.7 percent within two days. Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations.

Deaton, Inc. (Deaton)—
Birmingham, Ala.

Protest:—Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applpications.

Operations:—See Appendix A-4, pages A-11-12.

Specifically involved are Deaton's operations as a common carrier of general commodities between Atlanta and Birmingham and points within 65 miles of Birmingham, on the one hand, and, on the other, Memphis, New Orleans, and all points in Mississippi; also 27 grants of specific commodities authority. Deaton handles both truckloads and less-than-truckload freight. Being an irregular route operator it holds out no firm commitment of scheduled service but informs shippers that normally shipments originating at Atlanta or Birmingham will be delivered in Jackson in the next or second day service.

Interest:—Deaton's operations conducted from its terminals at Anniston, Birmingham, Mobile, Atlanta, Columbus, Greenville, Jackson, Natchez, Vicksburg, Memphis and New Orleans are affected by the applications protested. Eight of these terminal operations are conducted by cartage agents. During two one week periods (one in February 1966 and one in March 1967) Deaton billed at the above terminals an aggregate of over 43 million pounds of freight producing revenues for Deaton

of $311,242 (Vicksburg terminal was limited to the 1967 period inasmuch as it was only opened early in 1967). A large portion of this freight would be subject to diversion to one or more of the applicants. Deaton often interlines less-than-truckload freight destined to points in Mississippi which it is authorized to serve if the volume of such traffic does not warrant operation. The volume of traffic from Atlanta and Birmingham to New Orleans and points in Mississippi is three times that in the reverse direction. Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations.

Floyd & Beasley Transfer Company, Inc.
(Floyd & Beasley)—
Sycamore, Ala.

Protest:—Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

Operations:—See Appendix A-5, pages A-13-15.

Floyd & Beasley is primarily a common carrier of textile products, materials and supplies operating over irregular routes (79 percent of its business). It also is a common carrier of general commodities from points in South Carolina, Atlanta and Chattanooga to Birmingham as well as to certain other Alabama points. Its operating revenue for 1967 was over $3.7 million.

Interest:—Floyd & Beasley interlines substantial tonnage particularly at Birmingham. On shipments destined to Mississippi, Louisiana, Texas, Arkansas, Oklahoma, Missouri and points beyond, Floyd & Beasley is fearful that its present interline traffic may be diverted to the applicants who would transport the shipments to destinations or to interline points nearer the destinations. Any diversion of its present traffic will seriously affect its financial stability.

Baggett Transportation Company (Baggett)—
Birmingham, Ala.

Protest:—Herrin, Roadway, Red Ball, Strickland, Bowman and Jones applications.

Operations:—See Appendix A-8, pages A-18-20.

Baggett maintains terminals at Atlanta, Columbus, Rome, Anniston, Birmingham, Decatur, Gadsden, Huntsville, Mobile,

Montgomery, Opelika, Ozark, Selma, Sylacauga, Tri Cities, Tuscaloosa, Union Springs, Pensacola, New Orleans, Gulfport and Chattanooga. Baggett conducts

single-line operations between all of these terminal points and serves intermediate points. It is predominantly a delivery or distribution carrier for the long haul carriers serving Atlanta, Chattanooga, Birmingham and New Orleans. Ninety-five percent of its traffic is less-than-truckload.

Interest:—During the month of May 1967, Baggett handled between the above terminals 55,623 shipments weighing over 55 million pounds and producing a revenue of $564,217. Of these shipments 26,896 were interline shipments weighing over 26.7 million pounds and producing a revenue of $219,009. One or more of the applicants protested conflict with Baggett's operations to some extent, including a number which would conflict with its explosive operations authorized in some 44 States. The extent of the possible diversion was not computed, but the proposed additional competition is considered to be substantial.

Georgia-Florida-Alabama Transportation Co. Inc. (GFA)—Dothan, Ala.

Protest:—Herrin, Roadway, Red Ball, Floyd & Beasley, Strickland, and Baggett applications.[6]

Operations.—GFA is a common carrier of general commodities operating over regular routes between Atlanta on the north and Pensacola and Mobile on the south serving intermediate points; and operating over irregular routes between points

[6] Protest to the Bowman application withdrawn by petition dated September 30, 1968.

in Mississippi, Alabama and Florida within 75 miles of Bay Minette, Ala. It maintains terminals at Dothan, Andalusia, Atlanta, Pensacola, and Mobile and agency stations at Fort Walton Beach, Pascagoula and Eufala. It operates 73 tractors, 162 trailers and 52 pickups. It interlines freight with 84 connecting carriers at Atlanta, Andalusia, Dothan, Mobile, Crestview and Pensacola, including seven of the applicants.

Interest:—A substantial amount of the GFA traffic may be subject to diversion by these applications. For example, on May 15, 1967, GFA transported 427 shipments weighing a a total of 296,393 pounds between various points on its routes all of which which would be subject to diversion if these applications were granted. The record shows that GFA delivered 83.1 percent of these shipments the first day and 98.3 percent by the second day. A similar tabulation for May 19. 1967, shows a total of

440 shipments weighing 222,511 pounds subject to diversion. 88.5 percent of those were delivered the first day and 98.3 percent by the second day.

GFA serves both International Paper Company and Ingalls Shipbuilding Company at Moss Point, Miss. Normally International Paper Company requires through trailer service for its truckload shipments which GFA provides in conjunction with its connecting carriers. GFA also serves Armstrong Cork Company at Pensacola, Fla., which company requires through trailer service in connection with its truckload shipments. Much of this traffic is handled in conjunction with Roadway Express as the interlining carrier at Atlanta. In a 3-month period GFA handled 104 shipments weighing over 2.3 million pounds for Armstrong Cork Company which were interlined at Atlanta. Seventy-one percent was delivered to the interlining carrier the first day and 91 percent by the second day. GFA's interline

with Roadway at Atlanta is an important segment of its business. In the 2-month period of September and October 1966, GFA received from Roadway at Atlanta 292 shipments destined to points on its routes for delivery or interline. These shipments weighed 260,076 pounds. Fifty-four percent were delivered the first day and 89 percent by the second day. GFA is not using its equipment to capacity. It is of the opinion that it is performing an adequate service, and believes that diversion of its traffic that may result from a grant of these applications will seriously impair its operations and services.

Pilot Freight Carriers, Inc. (Pilot)—
Winston-Salem, N. C.

Protest:—Roadway and Bowman applications

Operations:—Pilot is a common carrier of general commodities and various specific commodities operating in the States of Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Ohio and the District of Columbia. It maintains 32 terminals throughout that territory. It operates 455 tractors, 917 trailers and 152 straight trucks. Its operating revenue in 1966 was over $26 million.

Interest:—Pilot participates in the transportation of freight between points in the above area and points in the Gulf Coast and Southwestern area proposed to be served by Roadway and Bowman. Atlanta is Pilot's primary gateway point for interchange of such traffic.

with the gateways of Fort Oglethorpe and Savannah, Ga., Greenville, S. C., and Charlotte, N. C., handling lesser amounts of traffic. In 1966 Pilot received from interlining carriers at these

terminals over 43 million pounds of freight and interlined to other carriers over 47.7 million pounds. This included interlining with four of the applicants, namely, Baggett, Deaton, Herrin and Johnson. Of the other 10 carriers with which Pilot interlined at these points, nine are protestants in these proceedings.

Pilot is not operating to capacity and in fact, it has an imbalance of freight at Atlanta to the extent of requiring operation of about 20 empty vehicles weekly out of that point. A diversion of freight will be detrimental to Pilot's operations.

The Mason and Dixon Lines Incorporated (Mason & Dixon)— Kingsport, Tenn.

Protest:—The Bowman application.

Operations:—Mason & Dixon is a common carrier of general commodities operating over routes extending between Chicago and Memphis on the west, Birmingham and Atlanta on the south, and Scranton and the New York City area on the north and east. It maintains some 30 terminals throughout this area and operates 187 road tractors, 1,244 trailers, and 246 pickup units. Its operating revenue for 1966 was over $39 million.
Interest:—Mason & Dixon handles a large amount of interline freight moving to or from points in Arkansas, Texas, Oklahoma and Mississippi, on the one hand, and, on the other, points on its routes. During the first 24 weeks (6 accounting periods) in 1967, Mason & Dixon transported between its northeast area and the southwestern States as above noted 32,309 shipments weighing 53.4 million pounds and producing revenue of over $1 million. In the same period between the south and southeastern points and the southwestern area it transported 3,986 shipments weighing over 5 million pounds producing revenue of $71,109. Its transcontinental traffic during this

period moving between the eastern area and the west coast area amounted to 5,164 shipments weighing about 6.5 million pounds producing revenue of $94,983. A grant of the Bowman application will subject a very substantial portion of this traffic to diversion.

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Georgia Highway Express, Inc. (GHE)—
Atlanta, Ga.

Protest:—The Herrin, Red Ball, Strickland, Baggett, Bowman and Jones applications.

Operations:—GHE is a common carrier of general commodities operating over both regular and irregular routes in Alabama and Georgia and over regular routes in eastern Tennessee. It maintains terminals at 20 points in Georgia, 10 in Alabama and 3 in Tennessee. GHE operates 280 tractors, 788 trailers and 198 pickup units. Its operating revenue for 1966 was over $15.7 million.

Interest:—GHE fears that granting of these applications will result in diversion of interline traffic it is now handling to or from the territory for which applicants are seeking authority. GHE maintains interline facilities to handle this traffic at Atlanta, Birmingham, Mobile and Chattanooga.

Campbell Sixty-Six Express, Inc. (Campbell Sixty-Six)—
Springfield, Mo.

Protest:—All applications except Bowman's.[7]

Operations:—Campbell Sixty-Six is a common carrier of general commodities operating over routes extending between Chi-

[7] Protest of Bowman application withdrawn subsequent to hearing.

cago on the north, Kansas City and Tulsa on the west, Birmingham and Mobile on the east, and New Orleans and Baton Rouge on the south.[8] It operates 30 terminals and 2 agency stations throughout its routes which include 12 in Mississippi, 7 in Missouri, 4 in Arkansas, 2 each in Kansas, Louisiana and Alabama, and 1 each in Illinois, Tennessee and Oklahoma. It operates 374 tractors, 738 trailers and 200 pickup and delivery trucks. Its operating revenue in 1966 was almost $21.8 million.

Interest:—Some traffic moving to or from each of Campbell Sixty-Six's terminals is subject to diversion by these applications. For most of the terminals new direct single-line competitive services are being proposed.

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Campbell Sixty-Six is of the opinion that it is performing a reasonably adequate and satisfactory service and is capable of handling additional freight. Its offered service between Birmingham and its direct points in Mississippi varies from overnight to second day and between Birmingham and Missouri points second or third day service is offered. Data reflecting operations during certain test periods reflect on time performance on shipments handled ranging from 71.6 to 82.4 percent. Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants. However, in

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[8] In February 1969, Campbell Sixty-Six received a certificate from this Commission authorizing extension of its operations to Atlanta restricted to the transportation of traffic originating at or destined to or interlined with other carriers at authorized service points on its presently authorized routes in Mississippi and Missouri except Gulfport, Miss., and Kansas City and St. Louis, Mo., and points within the commercial zones of each. (No. MC-75320 (Sub-No. 106)).

this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender its freight for certain Mississippi points it is authorized to serve.

Shippers Express, a motor common carrier of general commodities operating within the State of Mississippi between Jackson, on the one hand, and, on the other, points in Mississippi within 100 miles of Jackson, appeared as a witness supporting the protest of Campbell Sixty-Six as well as those of certain other protestants. Shippers Express serves primarily as a distribution carries on interstate traffic interlined with other carriers including some of the applicants at Jackson. It maintains terminals at Jackson, Natchez, Vicksburg, Greenville and Philadelphia, Miss. It operates 12 tractors, 26 trailers and 23 pickup trucks.

Jack Cole Company (Jack Cole)—
Dixie Highway Express, Inc. (Dixie)—
Birmingham, Ala.

Protest:—All applications.

Operations:—Jack Cole and Dixie are motor common carriers of general commodities as well as of specific commodities. Jack Cole controls Dixie and has been operating Dixie since January 1965.[9] Jack Cole's operation extends primarily between numerous Alabama points, on the one hand, and, on the other, points in Tennessee, Indiana, Ohio, a portion of Illinois including Chicago, and the Detroit, Philadelphia and New York City areas. Dixie's operation is over a network of routes primarily between New Orleans, La., and Jackson, Miss., on the west, and Atlanta and Columbus, Ga., on the east,

[9] On November 15, 1967, R. E. Short, who controls Admiral-Merchants Motor Freight, Inc., of Minneapolis, Minn., acquired control of both of these companies pursuant to authority of the Commission in No. MC-F-9871.

passing through such principal intermediate points as Meridian, Laurel and Hattiesburg, Miss., Anniston, Birmingham, Montgomery, Opelika, Selma and Tuscaloosa, Ala. Together these protestants maintain 28 terminals and agency stations throughout the territory served. They operate a total of 194 tractors and 755 trailers over the road, and for city work, 162 pickups, 142 tractors and 45 trailers. Their combined operating revenue for 1966 was almost $21 million.

Interest: Jack Cole and Dixie handle a substantial amount of freight which would be subject to diversion by one or more of the applicants. In the month of May 1967, 40,492 of the shipments handled by these protestants weighing over 47.4 million pounds and producing revenue for Jack Cole and Dixie of $911,059 would be subject to diversion through these applications. This constitutes approximately 52 percent of the total combined revenues of Jack Cole and Dixie for the month. Of these shipments, 5,716 weighing some 5.6 million pounds and producing revenue of $97,822 were interlined between Jack Cole or Dixie and the applicants. By far the largest amount of this interline was with Red Ball at Jackson, Miss. Interline with Red Ball accounts for about 10 percent of the operating revenue of Dixie and almost 4 percent of the combined operating revenue of Jack Cole and Dixie.

Jack Cole and Dixie hold out to the public a second day service between their terminal points in Alabama, Georgia, Louisiana, Mississippi and Tennessee. Faster service is not held out because the freight is routed through the Birmingham terminal as a break-bulk station. This involves some delay resulting in the greater portion of the freight between these terminals receiving second day service. The carriers have experienced no substantial objection to the service from their shippers. Records of performance during a one week period in May 1967 discloses on time performance out of the Atlanta terminal ranging from 58 to 93.7 percent of the shipments handled; from

the Birmingham terminal from 72.6 to 100 percent on time performance, from the New Orleans terminal from 87 to 100 percent; from Jackson terminal from 20 to 89 percent; from the Memphis terminal from 30 to 100 percent; and from the Meridian terminal from 25 to 67 percent. Of the total 1,136 shipments involved in the one week test period, 798 or 70 percent received on time service, and 94 percent were delivered by the third day.

Jack Cole-Dixie have an imbalance of freight moving westbound. In May 1967 they operated 129 empty vehicles from New Orleans, Jackson, Meridian and Memphis back to the Atlanta and Birmingham areas. They express the view

that they are performing a reasonably adequate service to the public and that the grant of these applications not only will divert from them traffic essential to their continued operation, but also will result in reducing even more the freight available for eastbound operations from the four points mentioned to the Birmingham and Atlanta areas.

Brown Transport Corp. (Brown)—
Atlanta, Ga.

Protest:—The Herrin application.

Operations:—Brown is a common carrier by motor vehicle of general commodities operating as here relevant over routes extending between Knoxville, Tenn., on the north and Augusta and Savannah, Ga., in the south and east, serving numerous intermediate points including Etowah and Maryville, Tenn., and Atlanta, Athens and Macon, Ga. It operates 12 terminals throughout its territory including 2 in Tennessee and 10 in

Georgia. It operates 225 trailers, 81 road tractors and 28 city tractors as well as 96 pickup and delivery units. Its operating revenue in 1966 was $5 million. Brown, solicits traffic moving between points on its system, on the one hand, and, on the other, points in Alabama, Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas, operating primarily through the Atlanta gateway.

Interest:—Brown has joint through routes and rates with Herrin over the Macon gateway. It opposes Herrin's extension of operation into Atlanta which may well divert a considerable amount of freight. During June 1965, Herrin delivered to Brown in Macon for movement to Atlanta alone some 185 shipments weighing approximately 200,000 pounds. This traffic was diverted from Brown after Herrin filed this application. [As noted in Appendix A-1, page A-4, in January 1968 Herrin extended its operation from Macon into Atlanta through a purchase of operating rights.]

East Texas Motor Freight Lines, Inc. (ETMF)—
Dallas, Tex.

Protest:—All applications except that of Roadway.

Operations:—ETMF is a common carrier of general commodities operating over routes extending from its Dallas-Fort Worth base area southward to San Antonio, Houston, Port Arthur and Beaumont, Tex., eastward through Shreveport or Memphis to Birmingham and Atlanta, and northward through Little Rock and St. Louis to Chicago.

Its operation into Atlanta and Birmingham was begun in April 1965 following purchase of those rights. ETMF maintains 19 terminals, 12 of which are located at Texas points. It operates

a total of 581 tractors, 1,011 trailers, and 388 straight trucks. Its operating revenue for 1966 was $34.3 million. ETMF predominantly handles less-than-truckload freight. In 1966 it transported 2,123,486 shipments of which only 28,317 were truckloads and the average weight per shipment was 886 pounds. An analysis of freight billed at Dallas and transported to Atlanta in the week of June 26, 1967 (825 shipments) disclosed that 34.3 percent weighed less than 100 pounds; and of the freight billed at Atlanta and transported to Dallas in the same week (814 shipments), 25.9 percent weighed less than 100 pounds. In 1966 claims were filed on only one percent of the shipments handled and the ratio of claims paid to revenue was 1.56 percent.

Interest:—The nine applications being protested seek authority which duplicates that of ETMF to a substantial extent and will subject a large portion of its tonnage to possible diversion if granted. For example, in the first six months of 1967, from Atlanta to its Texas, Louisiana, Arkansas and Memphis terminals, ETMF transported 100,228 shipments weighing about 65.3 million pounds, and in the reverse direction from those terminals to Atlanta it transported 73,729 shipments weighing about 77.5 million pounds. From Birmingham there were 30,350 shipments weighing 27.8 million pounds and to Birmingham 26,664 shipments weighing 23.7 million pounds. Of all these, 78,588 shipments weighing a total of 62 million pounds moved between its Atlanta terminal, on the one hand, and its terminals at Dallas, Fort Worth and Houston on the other; and 24,925 shipments weighing a total of 19.4 million pounds moved between its Birmingham terminal, on the one hand, and its Dallas and Fort Worth terminals on the other.

ETMF interlines freight with other carriers to provide joint through service. It maintains joint rates and through routes with 36 carriers at Birmingham including applicants Baggett, Bowman, Deaton and Floyd & Beasley; with 35 carriers at

Atlanta including Baggett, Bowman and Johnson; with 24 carriers at Houston including Herrin, Red Ball and Strickland; with 30 carriers at Dallas including Herrin, Jones, Red Ball, Roadway and Strickland; with 23 carriers at Little Rock including Jones; with 12 carriers at Memphis including Bowman, Deaton, Herrin, Jones, Red Ball and Roadway; and with 12 carriers at Shreveport including Deaton, Herrin, Red Ball and Strickland. In the first six months of 1967

ETMF received a total of 8,866,311 pounds of freight at the three interchange points of Atlanta, Birmingham and Memphis from applicants Bowman, Johnson, Red Ball, Jones, Baggett, Floyd & Beasley and Deaton. Nearly one-half (4,239.915 pounds) was received from Bowman.

ETMF holds out to the public second day service on less-than-truckload freight between its Atlanta and Birmingham terminals, on the one hand, and, on the other, its terminals at Dallas, Fort Worth, Houston, Texarkana, Shreveport, Little Rock; and also between Birmingham, on the one hand, and, on the other, Beaumont, Henderson, Longview, Lufkin, Marshall and Tyler, with third day service between these latter points and the Atlanta terminal. Third day service also is offered between the Atlanta and Birmingham terminals, on the one hand, and, on the other, its San Antonio and Atlanta, Tex., terminals. A review of one week's traffic between the Atlanta and Dallas terminals, the Atlanta and Houston terminals, the Birmingham and Dallas terminals, and the Birmingham and Houston terminals, disclosed a total of 3,759 shipments handled of which 2,958 or 78.7 percent were delivered on time, that is second day or better service.

ETMF is of the opinion it is rendering a reasonably adequate and satisfactory service to the public. It is not operating at

capacity and is striving to obtain additional traffic. It now has the competition of a number of single-line services between its terminal points as well as numerous competitive joint-line services. Any diversion of its present freight which may result from the grant of these applications will impair its ability to continue its present standard of service.

Transcon Lines (Transcon)—
Los Angeles, Calif.

Protest:—All applications except that of Roadway.

Operations:—Transcon is a motor common carrier of general commodities authorized to operate over a network of routes extending between Atlanta and Birmingham in the Southeast through Memphis, Little Rock, Dallas, Fort Worth, Amarillo, Houston, Oklahoma City, Ponca City, Tulsa, St. Louis, Kansas City, Wichita and on to the West Coast; also between points in the New York City, Philadelphia, Wilmington, Baltimore and Washington area through the midwest and southwest points to the West Coast. Its authority to operate between these eastern points and the Southwest on a single-line basis was not acquired until after the hearing on these applications

was begun. Transcon maintains 46 terminals throughout the area and operates 786 tractors and 2,097 trailers in over-the-road service, and 406 straight trucks, 476 tractors and 269 trailers in pickup and delivery service. Its operating revenue for 1966 was over $66 million and for the first quarter of 1967 almost $19 million.

In 1966 Transcon transported 1,942,282 less-than-truckload shipments and only 38,053 truckload shipments. Sixty-seven

percent of its revenue was derived from less-than-truckload freight. Although authorized to serve many points in Arkansas and Oklahoma, Transcon does not offer less-than-truckload service to any points other than Little Rock, Ark., and Oklahoma City, Tulsa and Ponca City, Okla., and their commercial zones. It interlines freight to other points in those States. Similarly, in Georgia and Alabama it generally interlines freight to points beyond the Atlanta and Birmingham area even though it is authorized to serve the points, unless there is a sufficient volume to warrant the operation. Its operation from Atlanta to Kansas City is necessarily by way of Oklahoma City or Tulsa involving some circuity. As a result, Transcon interlines some of that traffic at Memphis with Jones. The average length of haul for Transcon in 1967 was 1,461 miles.

Interest:—Joint-line shipments are a very important portion of Transcon's freight. In 1966, 67 percent of its total shipments were handled in joint-line service producing 51.8 percent of its total operating revenue. At 10 of its terminals involved in these proceedings, namely, Atlanta, Birmingham, Dallas, Houston, Kansas City, Little Rock, Memphis, Oklahoma City, Tulsa and Wichita, Transcon interlined with connecting carriers in the month of May 1967 almost 60 million pounds of freight. This includes 1,217,179 pounds with Bowman and 121,787 pounds with Johnson at Atlanta; 435,635 pounds with Baggett and Floyd & Beasley at Birmingham; 1,026,305 pounds with Herrin, Red Ball and Strickland at Dallas; and 137,591 pounds with Bowman at Memphis.

Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data reflecting tonnage and revenue involved from such freight for the year 1966.

Tonnage

1966

Atlanta	Weight (Pounds)	Revenue (Dollars)
1. (a) From Atlanta to Dallas and Houston	33,744,555	$ 799,483
(b) From Dallas and Houston to Atlanta	25,914,325	569,545
2. (a) From Atlanta to Memphis, Arkansas, Oklahoma, Missouri and Kansas	40,279,280	813,875
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Atlanta	31,956,438	714,875
3. (a) From Atlanta to Amarillo	4,385,308	133,822
(b) From Amarillo to Atlanta	1,010,719	28,406
4. (a) From Atlanta to West Coast	63,815,421	3,636,381
(b) From West Coast to Atlanta	52,067,563	3,123,730
Total Atlanta Outbound	142,224,564	$5,383,561
Total Atlanta Inbound	110,949,045	$4,436,556
Birmingham		
1. (a) From Birmingham to Dallas and Houston	5,741,068	$ 104,288
(b) From Dallas and Houston to Birmingham	3,482,514	79,724
2. (a) From Birmingham to Memphis, Arkansas, Oklahoma, Missouri and Kansas	3,540,412	36,367
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Birmingham	9,678,391	94,464
3. (a) From Birmingham to Amarillo	2,785,135	61,745
(b) From Amarillo to Birmingham	635,731	13,125
4. (a) From Birmingham to West Coast	33,166,550	1,645,397
(b) From Coast to Birmingham	20,449,658	1,180,537
Total Birmingham Outbound	45,233,165	$1,847,797
Total Birmingham Inbound	34,246,294	$1,367,850

Operation between the Eastern Seaboard and the Southwest was not begun until the latter half of 1966. For the month of May 1967 Transcon transported between its Dallas and Houston terminals, on the one hand, and, on the other, its terminals at Richmond, Va., Baltimore, Md., Carlstadt, Metuchen, and Trenton, N. J., Newburgh, N. Y., Philadelphia, Pa., and Wilmington, Del., a total of 3,426,928 pounds producing revenue of $130,938. This traffic too is subject to diversion.

Transcon is of the opinion that it is performing a satisfactory service to the public and is actively soliciting additional freight. A traffic study of shipments handled during certain periods in May 1966 between various of the Transcon terminals depicting the elapsed time from the Transcon billing date to the date the shipment was delivered to the consignee or a connecting line discloses the following data with respect to certain of the key terminals here involved.

Period May 9 through May 21, 1966 except as noted by * which indicates period as May 9 through May 13, 1966.

			Service from Billing Date	
From	To	No. of Shipments	2nd day or better	3rd day or better
Birmingham	Okla. City	245	78.7%	97.1%
"	Tulsa	173	83.8%	97.6%
"	Dallas	131	34.3%	91.6%
Atlanta	Okla. City	446	60.7%	73. %
"	Tulsa	310	77.8%	95.1%
"	Dallas	1,427	86.7%	98.8%
Okla. City	Birmingham	109	67. %	90.8%
Tulsa	"	172	59.9%	86. %
Dallas	"	167	47.3%	85. %
Little Rock	"	4	75. %	75. %
*Okla. City	Atlanta	42	28.6%	52.4%
*Tulsa	"	78	74.3%	92.3%
*Dallas	"	222	74.8%	86. %

Roadway Express, Inc. (Roadway)—
Akron, Ohio

Protest:—All applications except its own.

Operations: See Appendix A-2, pages 6-7.

Briefly Roadway's interconnecting network of regular routes extends along the Eastern Seaboard from Boston through Atlanta to Montgomery, Ala., with service at such major points as Providence, R. I., New Haven, Conn., New York City, Scranton, Harrisburg and Philadelphia, Pa., Baltimore, Md., Richmond, Va., and most major industrial cities and areas in the Carolinas and Georgia; also within the central and southern States serving major industrial cities and areas in upper New York State, Ohio, Michigan, Illinois and Indiana, Milwaukee, Wis., St. Louis, Mo., Nashville, Memphis, and Chattanooga, Tenn., Atlanta, Ga., and Gadsden, Birmingham and Montgomery, Ala.; and also between those areas and the Southwest serving such major points as Kansas City, Tulsa, Oklahoma City, Dallas, Houston, Amarillo and San Antonio, Tex. As noted in Appendix A-2 subsequent to the close of the hearing it acquired control of protestant West Brothers, Inc.

During 1966 Roadway transported a total of 4,996,034 shipments. Of these, 58.9 percent weighed less than 300 pounds and 83.9 percent weighed under 1,000 pounds. Its 119 terminals include its major break-bulk terminals as well as the satellite terminals which for the most part feed through one of the major break-bulk terminals. Direct loading from origin to destination is the usual practice where the volume of freight warrants; otherwise the shipments are routed through one of the break-bulk terminals.

Interest:—A large portion of Roadway's present traffic will be subject to diversion if these applications are granted. For example, in a two week period May 29 through June 11, 1966,

Roadway transported over 16,000 shipments weighing in excess of 13 million pounds moving between Texas points, on the one hand, and, on the other, points in Georgia, Alabama, North Carolina, South Carolina, Tennessee, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. All of this traffic would be subject to diversion to one or more of the applicants.

Roadway maintains that this freight is now subject to numerous single- and joint-line competitive services and that Roadway performs a satisfactory service for the public.

Roadway has established certain service standards which it holds out to the public. These are said to be realistic standards which form the major basis for Roadway's incentive monetary awards to its employees. Briefly the Roadway schedules to and from Dallas and Houston are third morning for Alabama, Tennessee and Georgia points with the exception of Atlanta which is second morning. Between Texas points and the satellite terminal points in North Carolina and South Carolina the standard is four days, and three days from or to the major terminals of Greenville, Spartanburg, Charlotte and Winston-Salem. Its schedules are four days between the Texas points and points in Virginia, Kentucky, Maryland, Pennsylvania, New Jersey and the major points in upper New York State. They are five days to and from the satellite upstate New York points and all of New England. Employees at the various terminals responsible for "on time" performance under these standards receive incentive awards on the basis of performance within the standard. In 1966 Roadway paid approximately $3 million in incentive awards. These service standards are constantly reviewed so that they will not be too stringent to destroy the incentive, nor so liberal as to be too costly to the company. A review of the elapsed time from the Roadway billing date to delivery of the

freight to the consignee or connecting carriers for these 16,000 shipments indicates a very substantial on time performance under the Roadway standards.

In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the Roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance.

Herrin Transportation Company (Herrin)—
Houston, Tex.

Protest:—The Red Ball, Deaton, Floyd & Beasley, Strickland, Baggett and Jones applications.

Operations:—See Appendix A-1, pages A-1-5.

In brief Herrin's authority extends from Dallas-Fort Worth and Houston on the west to Little Rock and Memphis on the north; also through Shreveport, La.,

Jackson, Miss., and Montgomery, Ala., to Columbus, Ga.; and along the Gulf Coast through Beaumont, Port Arthur, New Orleans and Pensacola to Jacksonville, Fla., and Brunswick and Savannah, Ga., on the East Coast. It serves 16 points in Arkansas, 50 in Florida, 125 in Georgia, 237 in Louisiana, 15 in Tennessee and 155 in Texas.

Interest:—A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted. During the last three months of 1966 the freight handled through its various terminals which is considered subject to diversion by these application is as follows:

Herrin Freight Affected by Applications
Period—Oct., Nov., Dec., 1966

From (Terminal)	No. of Shipments	Weight (Pounds)	Herrin Revenue
Dallas	4,794	4,785,017	$ 91,420
Houston	7,970	9,201,446	159,834
Macon	3,984	5,335,721	96,283
Pensacola	467	2,408,350	27,405
Savannah	1,641	2,328,235	48,726
Jacksonville	5,704	6,296,718	130,336
Shreveport	325	876,505	15,351
Monroe	256	302,892	4,967
Baton Rouge	339	2,912,990	22,757
Lake Charles	649	631,535	85,862

ET&WNC Transportation Company (ET&WNC)—
Johnson City, Tenn.

Protest:—The Baggett and Bowman applications.

Operations:—ET&WNC is a motor common cvarrier of general commodities operating over regular routes extending between New York City, Philadelphia, Wilmington, Baltimore and Washington on the north and east, Little Rock, Ark., on the west, and Greenwood and Greenville, Miss., on the south, serving points in North Carolina, South Carolina and Tennessee, northwest Georgia, northwest Alabama,

western Mississippi and northeastern Arkansas. It maintains 33 terminals including 14 in Tennessee, 7 in North Carolina, 4 in Mississippi, 2 each in South Carolina and Arkansas and 1 each in Alabama, Maryland, Pennsylvania and New York. It operates 271 tractors, 539 trailers and 133 pickup and delivery trucks. Its operating revenue for 1966 was over $11.5 million.

Interest:—ET&WNC protests the Bowman proposal to serve Little Rock and Jonesboro, Ark., and Greenwood and Greenville, Miss., and its proposal to serve points west of Memphis involving freight which ET&WNC handles on an interline basis primarily through its Memphis terminal. Its protest of the Baggett application includes primarily the proposal to serve between certain points in Texas and Louisiana, on the one hand, and Chattanooga and points in north Alabama common to both carriers, on the other. Those points include Florence, Tuscumbia, Muscle Shoals, Sheffield and Scottsboro.

A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. During the month of May 1966 ET&WNC transported some 2,747 shipments weighing over 2 million pounds to or from the following of its terminals which would be subject to diversion.

ET&WNC Freight Subject to Diversion by Bowman & Baggett Applications—May 1966

ET&WNC Terminal	No. of Shipments	Weight (Pounds)
Little Rock, Ark.		
Outbound	450	216,699
Inbound	617	734,747

ET&WNC Terminal	No. of Shipments	Weight (Pounds)
Jonesboro, Ark.		
Outbound	69	19,495
Inbound	74	76,077
Greenville, Miss.		
Outbound	176	193,337
Inbound	128	177,040
Greenwood, Miss.		
Outbound	96	34,204
Inbound	102	64,783
Memphis, Tenn.		
Outbound	600	102,535
Inbound	435	546,921

This is valuable and necessary traffic and any loss will adversely affect ET&WNC. Additionally, ET&WNC has the equipment and facilities to handle increased tonnage over its lines.

United Motor Freight Terminal, Inc. (United)— Birmingham, Ala.

Protest:—The Herrin, Red Ball, Floyd & Beasley, Strickland, Johnson and Jones applications.

Operations:—United is a motor common carrier of general commodities operating over regular routes between Atlanta and Birmingham serving intermediate points and off-route points within 15 miles of Atlanta and those within 5 miles of Birmingham. It maintains terminals at Atlanta, Ga., Birmingham,

Anniston and Heflin, Ala. It operates 48 trailers, 14 over-the-road tractors, 17 city tractors and 31 pickup trucks. During 1966 it transported 143,809 less-than-truckload shipments and 2,122 truck-load shipments, and its operating revenue was over $1.3 million. United has interline arrangements with 39 connecting carriers at Atlanta and 35 at Birmingham. Over 60 percent of its traffic is interlined.

United holds out overnight service between Atlanta and Birmingham, operating about six schedules per day from Birmingham to Atlanta and eight or nine in the reverse direction from Atlanta to Birmingham. This imbalance has necessitated the return of 8 to 10 empty vehicles per week from Birmingham. During two different one week test periods United transported an aggregate of 1,264 shipments from Birmingham to Atlanta of which 86.8 percent received overnight service, and 96.8 percent were delivered by the second day. In the same periods United transported an aggregate of 3,978 shipments from Atlanta to Birmingham of which 95.6 percent received overnight service and 98.6 percent were delivered by the second day.

Interest:—Three of the applicants (Strickland, Red Ball and Jones) propose a service between Atlanta and Birmingham which will be directly competitive with that of United. In addition, United interlines substantial freight moving to or from Louisiana and Texas points much of which traffic will be subject to diversion to the proposed single-line services of the applicants. For some years United has worked closely with Mercury Freight Lines which operates between Birmingham, on the one hand, and, on the other, Dallas, Fort Worth, Houston and Beaumont, holding out to the public a third day

service from Atlanta to these Texas points on less-than-truckload freight. A review of the shipments during the previously

noted two one week test periods, disclosed that of the 214 shipments transported by the Mercury Freight/United joint-line service from Texas points to Atlanta, 66.8 percent were delivered on time (within the third day) and 93 percent were delivered by the fourth day.

United is a relatively small short line (approximately 165 miles) carrier which now has substantial single-line competition for freight moving between Atlanta and Birmingham and also single-line competition for its joint-line services in connection with freight moving between Atlanta and the Texas points. It is in a position to handle additional freight. Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United.

Red Ball Motor Freight, Inc. (Red Ball)—Dallas, Tex.

Protest:—The Herrin, Roadway, Deaton, Floyd & Beasley, Strickland, Baggett, Bowman and Johnson applications.

Operations:—See Appendix A-3, pages A-8-10.

In brief Red Ball is a motor common carrier of general commodities operating over a network of routes within the States of New Mexico, Colorado, Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Mississippi, Alabama, Kansas and Missouri. It operates 654 tractors, 1,591 trailers, and 712 pickup trucks. Its operating revenue in 1966 was over $41.6 million (73 percent of which was derived from less-than-truckload freight and 27 percent from truckload). It operates 93 terminals throughout its routes and serves 136 points in Arkansas, 24 in Alabama, 630 in Louisiana (153 of which are intrastate only), 541 points in Texas, 112 points in Colorado, 83 points

in New Mexico, and Kansas City, Kans.-Mo., and Memphis, Tenn. It maintains interline arrangements with a large number of carriers at various points on its routes including most of the applicants.

Interest:—Applicants are proposing competitive single-line services between, points which Red Ball now serves. In addition, they propose services between Atlanta and Birmingham and points now served by Red Ball which duplicate the proposal of Red Ball as an applicant. It is Red Ball's position that its present services are

adequate and satisfactory to meet any public need. Red Ball holds out to the public a second day service between Dallas, Tex., and Jackson, Miss.; also between Mobile, New Orleans and Baton Rouge, on the one hand, and, on the other, Houston, Beaumont, Port Arthur, Orange and Dallas; and also between Memphis, on the one hand, and, on the other, Dallas, Houston, New Orleans, Kansas City and Baton Rouge. It offers a first day service between Dallas, on the one hand, and, on the other, Monroe and Shreveport, La., El Dorado and Crossett, Ark., Jackson, Miss., and Baton Rouge, La. During the two months of March and July 1967 Red Ball transported an aggregate of 4,797 shipments from Dallas to Jackson, Miss., of which 85.2 percent received on time delivery to consignees or connecting carriers (not more than second day service) and 97.5 percent were delivered by the third day. In July 1967 Red Ball transported 432 shipments from Baton Rouge to Memphis delivering 85.6 percent on time (by the second day) and 93.5 percent by the third day. Data exhibiting service performance between other points was not furnished.

Red Ball expresses the view that if additional authority is to be granted for single-line service between Atlanta and Birmingham, on the one hand, and points in Louisiana, Mississippi,

Arkansas, Texas, Kansas and Missouri, on the other, as sought by these applicants. Red Ball is the appropriate receipient of such authority because of its extensive coverage of cities and communities in these States and its ample terminal and operating facilities and financial resources which would enable it to provide single-line services far more extensive in the southwest territory than those proposed by any of the other applicants.

Ryder Truck Lines, Inc. (Ryder)—Jacksonville, Fla.

Protest:—All applications.

Operations:—Ryder is a motor common carrier of general commodities operating over a network of routes extending between Miami, Fla., New Orleans, La., and Houston, Tex., on the south, Shreveport, La., Memphis, Tenn., and St. Louis, Mo., on the west, Milwaukee, Wis., Chicago, Ill., Indianapolis, Ind., Cincinnati, Ohio and Roanoke, Va., on the north, and Raleigh and Charlotte, N. C., and Jacksonville, Fla., on the east. Since April 1966 Ryder has controlled Harris Express, Inc. (Harris), who also is a motor common carrier of general commodities with regular routes extending between the New York City area on the north and Greenville, S. C., on the south by way of Philadelphia, Baltimore,

Charlotte and Greensboro, N. C., among other important points. It is also authorized to serve substantial areas in North Carolina, South Carolina, Pennsylvania and New Jersey.

Prior to August 1965, Ryder was owned by Ryder System, Inc. Since that time it has been owned by International Utilities, Inc., which in turn is owned by International Utilities Corporation. Following the change in ownership there have been a number of changes in management and operations.

Ryder operates 568 over-the-road tractors, 1,742 over-the-road trailers, 499 pickup trucks, 627 pickup tractors and 549 pickup trailers. Harris Express operates 50 over-the-road tractors, 136 over-the-road trailers, 26 pickup tractors, 6 pickup trailers and 25 pickup trucks. Ryder's operating revenue for the first six months of 1967 was about $28 million. Ryder operates 60 terminals and 18 agency terminals on its routes, and Harris operates 10 terminals.

Ryder handles mainly less-than-truckload shipments and where the volume of freight warrants it operates direct schedules between its terminals. Where the traffic volume does not warrant, it will operate through one of its break-bulk terminals for the purpose of consolidating freight. It serves much of its territory through the operation of peddle runs to the smaller towns and communities near its terminals. At times it also interlines freight with other carriers to some points it is authorized to serve directly where, considering the volume and flow of traffic involved, such interline service will result in a faster and more satisfactory handling of the freight. It maintains connecting line concurrences with many carriers but for the most part limits participation in through rates to two line hauls.

Interest:—Ryder opposes the portions of these 10 applications that would enable the applicants to operate between points in Texas, Louisiana or Mississippi, on the one hand, and, on the other, points in North Carolina, South Carolina, Georgia, Florida, Tennessee and Alabama; also between points in Louisiana, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Ohio and Wisconsin; and between Memphis and Altanta, Ga., or points in Florida. In connection with its operation of Harris Express, it is also opposed to the applications (particularly those of Bowman, Roadway and Johnson) which will enable those carriers to operate between the Harris terri-

tory in New York, New Jersey, Pennsylvania, the District of Columbia, Maryland, Delaware,

Virginia, North Carolina and South Carolina, on the one hand, and, on the other, points sought to be served in Louisiana, Mississippi and Texas that are served by Ryder.

During a one week test period in March 1966 Ryder transported some 7,258 shipments weighing over 8.9 million pounds between certain points on its routes in the area most involved in these applications. All of this freight is considered to be subject to diversion if these applications are granted. On an annual basis Ryder estimates that this volume of freight subject to diversion will amount to approximately $7.5 million in revenue to Ryder. This is exclusive of any of the Harris shipments which would be affected by these applications.

Ryder has established certain service standards which it holds out to the public. These standards are applicable not only to the terminal cities specified but also to the areas served by those terminals. For example, the Houston terminal also serves Texas City and Galveston. As related to these applications the service standards (in days) are as follows:

SERVICE STANDARDS OF RYDER TRUCK LINES, INC. BETWEEN AREAS INVOLVED IN THE INSTANT APPLICATIONS

Between	Houston, Tex.	All Other Texas Terminals	New Orleans La.	Baton Rouge, La.	All Other Louisiana Terminals	Jackson, Miss.	Meridian, Miss.	All Other Mississippi Terminals	Memphis, Tenn.
Charlotte, N. C.	3	4	3	3	4	3	3	3	3
All other N. C. terminals	4	4	4	4	4	4	4	4	4
Greenville, S. C.	3	4	3	3	3	3	3	3	3
Atlanta, Ga.	3	4	2	2	3	2	2	3	2
All other Georgia terminals	4	4	3	3	4	3	3	4	3
Jacksonville, Fla.	4	4	3	4	4	3	3	4	2*/3**
Miami, Fla.	3	4	4	3	4	3	3	4	3*/4**
Tampa, Fla.	3	4	4	2	4	3	3	4	3*/4**
All other Florida terminals	4	4	4	3	4	4	4	5	3*/4**
Nashville, Tenn.	3	4	3	3	4	3	3	4	1
Chattanooga, Tenn.	3	4	3	3	4	3	3	4	2
Knoxville, Tenn.	4	4	3	3	4	3	3	4	2
All other Tennessee terminals	4	4	3	4	4	4	4	4	2
Birmingham, Ala.	3	3	2	2	3	2	2	2	—
All other Alabama terminals	4	4	3	3	4	2	2	3	1
Eastern terminals	5	5	5	5	5	5	5	5	5
Ill., Ind., Ky., Ohio & Wis. terminals	4	4	3	3	4	3	3	4	2

* Southbound Standard.

** Northbound Standard.

An analysis of the 7,258 shipments during the one week test period discloses on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent, on the basis of the Ryder standards. Some of the shipments involved in this study were interlined by Ryder to destination even though Ryder is authorized to serve the point directly. The time computation includes only the time from Ryder's billing date to delivery to consignee or connecting line carriers. The number of shipments moving between the areas involved in the study and the performance is as follows:

ANALYSIS OF SERVICE PERFORMANCE OF RYDER TRUCK LINES, INC., ON SHIPMENTS BETWEEN CERTAIN AREAS DURING PERIOD OF MARCH 13 THROUGH 19, 1966

Between	Texas		Louisiana		Mississippi		Memphis	
	Number of Shipments	Percent On Time	Number of Shipments	Percent On Time	Number of Shipments	Percent On Time	Number of Shipments	Percent On Time
North Carolina	891	89.7%	589	85.7%	185	83.9%		
South Carolina	326	83.7%	131	81.7%	32	81.3%		
Georgia	649	87.5%	607	85.0%	99	81.8%	389**	85.6%**
Florida	927	87.1%	76	82.9%	55	81.5%	757	85.7%
Tennessee	251	84.5%	394	88.4%	93	83.9%		
Alabama	208	90.9%	457	87.5%	55	85.5%		
Ill., Ind., Ky., Ohio & Wis.			87*	80.5%*				

* To and from Baton Rouge and New Orleans, La., only.

** To and from Atlanta, Ga., only.

Although Ryder experienced some pickup difficulties and delays in the fall of 1965 after the merger of the Hoover Motor Express Company and the consolidation of terminal facilities of Hoover and Ryder at Atlanta, those problems appear to have been solved. A record of requests for pickup service during two weeks in March and one week in April 1967 indicates a total of 5,820 pickups scheduled, of which 5,736 or 98.6 percent were made.

Ryder believes that diversion of a substantial portion of its freight which may result from a grant of these applications will cause a decrease in its number of direct schedules between important service centers, will result in deterioration of its service to the public, and will adversely affect its financial status.

Braswell Motor Freight Lines, Inc. (Braswell)—
Dallas, Tex.

Protest:—All applications.

Operations:—Braswell is a motor common carrier of general commodities authorized to operate over regular routes extending from Los Angeles on the west by way of Phoenix, Tucson, El Paso to Houston, Tex., on the south; also by way of Fort Worth-Dallas and Shreveport to Memphis, Tenn., Jackson, Miss., and Baton Rouge and New Orleans, La., on the east; also between Houston and Oklahoma City and Tulsa by way of Dallas-Fort Worth; between New Orleans and Oklahoma City and Tulsa by way of Shreveport; and between New Orleans and Memphis by way of Jackson or Vicksburg. Braswell also is authorized to operate between points in Oklahoma, on the one hand, and, on the other, St. Louis, Mo., and points in central and eastern Illinois including Chicago.[10]

[10] At the time of the hearing in these proceedings the Commission had granted Braswell authority for the extension of its regular

Braswell has 34 terminals including 15 in Texas, 7 in Louisiana, 4 in Oklahoma, 3 in each Mississippi and Arizona, and 1 each in California and Tennessee. It operates 177 line-haul tractors, 316 line-haul trailers, 64 pickup tractors, 53 pickup trailers, and 152 straight trucks. Its operating revenue for 1966 was approximately $11.5 million. About 40 percent of its tonnage is interline freight.

Interest:—During the year 1966 (prior to instituting any service under its certificate authorizing an extension of operation between Jackson and Atlanta and Birmingham) approximately 25.7 percent of the tonnage transported by Braswell producing about 16 percent of its total operating revenue would have been subject to diversion if these applications had been granted. This tonnage is comprised of freight moving between the following points:

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routes from Jackson, Miss., by way of Birmingham, Ala., to Atlanta, Ga., with service also at Gadsden, Ala., and Rome, Ga.; and from Jackson by way of Meridian, Miss., Montgomery, Ala., and Columbus, Ga., to Atlanta serving intermediate points. However, service had not been intiated under that grant of authority pending termination of a certain civil litigation pertaining to the Commission decision. That litigation has been ended upholding the Commission's grant of the authority. Under the new certificate, Braswell proposes to serve some additional 141 points in Mississippi, Alabama and Georgia and establish a number of terminals in that area.

Braswell Freight Subject to Diversion—1966
System Totals:

Tonnage: 477,298,858 pounds

Revenue: $11,542,495.81

Terminal	Tonnage (Pounds)	Revenue
Fort Worth to		
New Orleans	9,071,597	$136,485.43
Jackson	2,551,656	46,210.05
Memphis	1,156,867	24,967.53
Dallas to		
New Orleans	11,404,109	$226,242.49
Jackson	6,337,214	139,949.72
Memphis	2,979,516	62,403.12
Houston to		
Jackson	1,506,826	$ 25,315.36
Memphis	1,113,260	19,998.49
Shreveport to		
Jackson	1,325,919	$ 19,320.87
Memphis	1,049,486	18,441.87
Monroe to		
Jackson	28,770	$ 3,107.13
Memphis	2,921,903	22,576.00

Terminal	Tonnage (Pounds)	Revenue
Jackson to		
Fort Worth	1,299,588	$ 23,349.29
Dallas	7,218,988	127,343.56
Houston	1,413,704	27,973.65
Shreveport	1,050,695	13,180.84
Monroe	537,457	7,266.98
Memphis	1,838,375	27,506.00
Memphis to		
Fort Worth	1,124,875	$ 20,564.55
Dallas	6,636,569	108,827.88
Houston	2,778,958	48,621.24
Shreveport	4,194,428	57,948.91
Monroe	4,598,838	69,852.61
Baton Rouge	3,623,224	56,665.88
New Orleans	11,445,006	155,256.47
Jackson	4,759,652	60,189.69
Baton Rouge to		
Memphis	5,414,593	$ 38,341.94
New Orleans to		
Memphis	8,554,574	$105,959.76
Fort Worth	2,579,605	35,744.93
Dallas	12,170,430	147,882.14

Braswell's protest of the applications is based not only upon this freight diversion, but also upon the diversion which may result from the proposed services which will be competitive with its extended operations to Mississippi, Alabama and Georgia points. It urges that its services have been satisfactory to the public as evidenced by the lack of complaints against it. Braswell's schedules offered to the public for example, include first day service between Jackson, Miss., on the one hand, and, on the other, Baton Rouge, New Orleans, Dallas and Shreveport, and second day service between Jackson and Houston, Oklahoma City or Tulsa; also first day service is offered between Memphis and New Orleans, and second day service between Memphis, on the one hand, and, on the other, Dallas, Oklahoma City and Tulsa.

APPENDIX W

The Order of the Interstate Commerce Commission Dated October 6, 1972, Denying Petitions Seeking a Declaration by the Commission that Herrin Transportation Company Extension—Atlanta, Georgia, Involved an Issue of General Transportation Importance

Service Date
October 6, 1972

ORDER

At a General Session of the **Interstate Commerce Commission**, held at its office in Washington, D. C., on the 2nd day of October, 1972

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.
(Houston, Tex.)
(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA.
(Winston-Salem, N. C.)

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION—ATLANTA, GA.
(Dallas, Tex.)

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION—DALLAS, TEX.
(Birmingham, Ala.)
(Reentitled)

DEATON, INC., EXTENSION—DALLAS, TEX.
(Birmingham, Ala.)

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION—DALLAS, TEX.
(Sycamore, Ala.)

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION—ATLANTA, GA.
(Dallas, Tex.)

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION—DALLAS, TEX.
(Birmingham, Ala.)

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION—DALLAS, TEX.
(East Gadsden, Ala.)

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION—DALLAS, TEX.
(Charlotte, N. C.)

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION—ATLANTA, GA.
(Springdale, Ark.)

Upon consideration of the consolidated record in the above-entitled proceedings, and of:

(1) Joint petition of East Texas Motor Freight Lines, Inc., Mercury Freight Lines, Inc., Roadway Express, Inc., and Roadway Express, Inc., of Miss., protestants, filed September 20, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance;

(2) Joint petition of Campbell Sixty-Six Express, Inc., ET& WNC Transportation Company, Gordons Transports, Inc., and Red Line Transfer & Storage Company, Inc., protestants, filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance:

(3) Joint petition of Transcon Lines, T.I.M.E.-DC, Inc., Consolidated Freightways, Yellow Freight System, Inc., and Holloway Motor Express, Inc., protestants, filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance:

(4) Petition of applicant in No. MC-76177 (Sub-No. 304), filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance:

and good cause appearing therefor:

It is ordered, That the pleadings to the extent they relate to No. MC-111231 (Sub-No. 67), be, and they are hereby, rejected, as inappropriate.

It is further ordered, That the petitions in all other respects be, and they are hereby, denied, for the reason that, in the judgment of the Commission, no issue of general transportation importance is involved.

By the Commission.

Robert L. Oswald
Secretary

(Seal)

APPENDIX X

Order and Judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, in Arkansas—Best Freight System, Inc., et al. v. United States of America and Interstate Commerce Commission and Red Ball Motor Freight, Inc., et al., entered September 11, 1973 (originally printed as Appendix J in the Joint Appendix to Jurisdictional Statements, Pages 739-794, Inclusive. Reprinted in Full Herein).

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

(Filed September 11, 1973)

No. FS-72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas Corporation; MERCURY MOTORS, INC., an Arkansas Corporation; ALAMO EXPRESS, INC.; BRASWELL MOTOR FREIGHT LINE, INC.; CAMPBELL SIXTY-SIX EXPRESS, INC.; CENTRAL FREIGHT LINES, INC.; ET&WNC TRANSPORTATION COMPANY; EAGLE MOTOR LINES, INC.; GORDONS TRANSPORTS, INC.; HOLLOWAY MOTOR EXPRESS, INC.; MERCURY FREIGHT LINES, INC.; RED ARROW FREIGHT LINES, INC.; RED LINE TRANSFER & STORAGE COMPANY, INC.; T.I.M.E.-D.C., INC.; TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.; ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs.

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants.

RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

JOHN E. MILLER, Senior District Judge.

The plaintiffs, 19 in number, bring this action to set aside, vacate, suspend, enjoin and annul that portion of the order of the Interstate Commerce Commission (ICC) that authorizes the issuance of a Certificate of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132), to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56), and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18) (hereinafter referred to as Red Ball, Bowman and Johnson, respectively, or applicants collectively). The applications were consolidated with others under Docket No. MC-1124 (Sub-No. 206) which was initially entitled "Herrin Transportation Company, Extension—Atlanta, Ga.," and was re-entitled "McLean Trucking Company, Extension— Atlanta, Ga."

This action was commenced pursuant to 28 U.S.C.A. § 1336, conferring jurisdiction upon this court, and §§ 2284 and 2321 through 2325, inclusive, of said Title, together with 49 U.S.C.A. §§ 305(g), 305(h), and 5 U.S.C.A. §§ 701 through 706, the Administrative Procedure Act, all providing for the procedure herein.

Venue exists under 28 U.S.C.A. § 1938, since plaintiffs Arkansas-Best Freight System, Inc., and Mercury Motors, Inc., are residents of and maintain their principal offices and places of business in Fort Smith, Arkansas.

On October 12, 1972, Red Ball, upon motion was allowed to intervene as a party defendant, and on October 12 it filed its original answer, and on December 4, 1972, filed its first amended answer. In the first amended answer, it alleged that the Commission entered an order on October 6, 1972, deny-

ing the petitions of plaintiffs seeking a finding that an issue of general transportation importance is involved in the proceeding.

On October 12, 1972, the court, upon motion, allowed Johnson to intervene as a defendant, and on the same day it filed its answer in which it denied that certain of the plaintiffs had appeared as protestants in opposition to the granting of the operating authority applied for by it.

On October 25, 1972, Bowman, upon motion, was allowed to intervene as a defendant, and on the same date it filed its answer, in which it alleged that certain of the plaintiffs did not file a petition for reconsideration in the proceedings.

On October 31, 1972, the court, upon motion, granted Roadway Express, Inc., and Roadway Express, Inc., of Mississippi permission for leave to intervene as plaintiffs.

On November 1, 1972, the court allowed a group of shippers, 41 in number, who had appeared as witnesses before the Commission on behalf of the Johnson application, to intervene in support of the application.

On December 4, 1972, defendants USA and ICC filed their joint answer.

On January 2, 1973, the court, upon motion, granted Jack Cole-Dixie Highway Company leave to intervene in support of the plaintiffs' complaint.

The authority granted Red Ball, Bowman and Johnson authorizes such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specific points, generally in the Southeastern and Southwestern portions of the United States. Each plaintiff and intervening plaintiff is a motor carrier that participated in the proceedings before the Commission as a protest-

ant in opposition to one or more of the applications granted by the Commission.

Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C.A. § 2284(3). *Arkansas-Best Freight System, Inc. v. United States*, 350 F.Supp. 539 (1972).

After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension—Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before the court. (Appendix A.)

In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southeast. Carriers operating in the Southwest sought extensions into the Southeast. Most of the applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met by applications by Southwestern carriers to operate

over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D.C., Atlanta, Ga., Dallas and Houston, Texas., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

A total of 66 rail and motor carriers entered appearances in opposition to the applications. Forty-eight of the protestants offered evidence through the testimony of 62 witnesses and numerous exhibits.

Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence,

one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969, twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, *nunc pro tunc*. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report

granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of Arkansas-Best Freight and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension—Atlanta, Ga., supra.

The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration, whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in

interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth.

The Examiners' Report

All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' Report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It

sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communities along the proposed routes.

Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal. A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example,

operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points, particularly the most distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been fol-

lowed in other proceedings. Compare, *United Parcel Service, Inc., Common Carrier Application*, 68 M.C.C. 199, 203.

Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p. 6)

Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assump-

tion that single-line service is better than connecting line service and that the elimination of interchange between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their delivery requirements." The Examiners considered significant the fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23.)

Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically

and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

> "* * * Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points ir areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportation service by protestants, applicants, as well as other carriers. They also reflect instances of good service.
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> "The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances

of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the Commission, however, the Examiners noted that:

"Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [*Transamerican Freight Line, Inc.—Purchase (Portion)—Allen Motor Lines*, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely

by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies * * * must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that

diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points * * * which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

> "The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).

"* * * remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31).

"* * * the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to a single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more carfeul attention to desirable routings and gateways and by more cooperation between the carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

The Exceptions

Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the

witnesses. No exception was taken, however, to any specific finding of fact.

Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

The Division Report

The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of the supporting witnesses' needs in these proceedings * * * can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings * * * of the Hear-

ing Officers * * * but, instead, enteres entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson brief, p. 21, Government brief, p. 38). In its subsequent report on reconsideration in *Jones, supra*, the same Division "restated" its findings in the report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's

treatment of protestants' evidence with other findings in its report:

> 1. The Division gave credance to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.
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> 2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.
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> 3. The shippers' studies generally "comprised only a *few* shipments made over a very extensive period of time," whereas all protestants' studies included *all* shipments handled during the periods covered.
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> 4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10.)

Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

Bowman and Johnson both presented transittime studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or for the reasons assigned, the Division acted *ex mero motu*, on exceptions. In finding that they were entitled to little weight thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled

for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763.) General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-

time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned.

After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such appli-

cants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however, the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants'

operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here pro-

posed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three —and no more—applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers." Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the

existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected" [" In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. *Liberty Trucking Co. Ext.—Lake Mills, Wis.*, 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweight any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611."

The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of the criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service.

such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

Other Matters

Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its *then existing* authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of peititons and replies thereto, some exceedingly comprehensive, were denied by a two-

to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

Unless restricted voluntarily or by order of the ICC, a carrier normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating "* * * with that authority previously granted * * * wherein applicant is authorized to serve points in * * *" and named sixteen (16) states and the District of Columbia. The States of Illinois, Indiana and Ohio were not named in the Federal Register publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the authority sought in the present proceedings to authority subsequently acquired. Subsequent to the publishing of the "Notice," Bowman acquired Albama Highway Express which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the present proceeding. Certain carrires had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

Conclusions of Law

1. This court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131; *Universal Camera Corp. v. N.L.R.B.*, 340 US 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; *United States v. Pierce Auto Freight Lines*, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In *Consolo v. Federal Maritime Commission*, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This court has clearly stated this principle on a number of occasions. *Willis Shaw Frozen Express, Inc. v. United States* (1966), 256 F.Supp. 257, 264; *Reddish v. United States* (1960), 188 F.Supp. 160, affirmed sub nom. *Interstate Commerce Commission v. J-T Transport Co., Inc.*, 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed.2d 147. As this court stated in *Patterson v. United States* (1959), 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F.Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in *Columbia Shippers and Receivers Ass'n, Inc. v. United States* (Del. 1969), 301 F.Supp. 310, 319, "*In addition* to the 'substantial evidenec' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 413, 28 L.Ed.2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord *Eastern Central Motor Carriers Ass'n v. United States* (D.C. 1965), 239 F.Supp. 591, 594. *Mitchell Bros. Truck Lines v. United States* (Ore. 1963), 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed.2d 744, 84 S.Ct. 1657. See also, *Campbell Sixty-Six Express, Inc. v. United States* (Mo. 1966), 258 F.Sup. 529; *Nashua Motor Express, Inc. v. United States* (N.H. 1964), 230 F.Supp. 646; *Omaha Grain Exchange v. United States* (Neb. 1961), 194 F.Supp. 929, 934; *Stott v. United States* (N.Y. 1958), 166 F.Supp. 851, 855; *Youngblood Truck Lines, Inc. v. United States* (N.C. 1963), 221 F. Supp. 809, 812, and *Heavy-Specialized Carriers Conference v. United States* (Mo. 1964), 231 F.Supp. 968, 970.

4. In *Overton Park, supra*, the court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The court cited L. Jaffe, *Judicial Control of Administrative Action* (1965). Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

"* * * Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work."

In *Burlington Truck Lines, Inc. v. United States* (1962), 371 U.S. 156, 83 S.Ct. 239, 9 L.Ed.2d 207, the court at page 245 of 83 S.Ct. said:

"Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884, 72 S.Ct. 152, 153, 96 L.Ed. 662 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' Federal Communications Comm'n v. RCA Communications, Inc., 346 U.S. 86, 90, 73 S.Ct. 998, 1002, 97 L.Ed. 1470. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare id., at 91, 73 S.Ct. at 1002, 97 L.Ed. 1470. And for the courts to determine whether the agency has done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. Interstate Commerce Comm'n v. J-T Transport Co., 368 U.S. 81, 93, 82 S.Ct. 204, 211, 7 L.Ed.2d 147; United States v. Caro-

lina Freight Carriers Corp., 315 U.S. 475, 488-489, 62 S.Ct. 722, 729, 86 L.Ed. 971; United States v. Chicago, M., St.P. & P.R. Co., 294 U.S. 499, 511, 55 S.Ct. 462, 79 L.Ed. 1023."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or *otherwise* not in accordance with law. (Emphasis added.) This terminology and the above authorities, clearly recognize that the determination of these issues involves a question of law." Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party * * *" 5 U.S.C. § 706. Although some questions concerning the court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in *Universal Camera Corp. v. N.L.R.B., supra*. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, *Administrative Law Treatise*, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffee explains the requirement for review on the whole record, as follows:

> "* * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never

tried. **A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried.** Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." *Judicial Control of Administrative Action*, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners, 5 U.S.C. §557(b). In this case, however, the Division did not eject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Division's report as well as to the findings embodied in the Division's report. This procedure was fully discussed in *Universal Camera Corp., supra*, where the court at page 496 of 340 U.S. said:

"We do not require that the examiner's findings be given more weight than in reason and in the light of judicial ex-

perience they deserve. The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other facts which in sum determine whether evidence is 'substantial.' "

See, also, *Bituminous Material & Supply Co. v. N.L.R.B.* (8 Cir. 1960), 281 F.2d 365.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this court to confine its review to a determination of the substantiality of such portions of the evidence. The court rejects this suggestion. Our duty is to review "the record in its entirety * * * including the body of evidence opposed to the Board's view." *Universal Camera Corp.*, 340 U.S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." *Campbell Sixty-Six Express, Inc. v. United States* (W.D.Mo. 1966), 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." *N.L.R.B. v. International Union of Operating Eng., Local 925* (5 Cir. 1972), 460 F.2d 589, 604. As stated in *Northeast Airlines, Inc. v. Civil Aeronautics Board* (1 Cir. 1964), 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of

the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." *Mary Carter Paint Co. v. F.T.C.* (5 Cir. 1964), 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S. Ct. 219, 15 L.Ed.2d 128. *HC&D*

Moving & Storage Company v. United States (Hawaii 1969), 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in *Ringsby Truck Lines, Inc. v. United States* (D.C. Colo. 1967), 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); *Ringsby Truck Lines, Inc. v. United States* (D.C. Colo. 1972), 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U.S. Sup. Ct. Oct. 24, 1972. In its first decision the court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged * * * and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' *General Increases—Transcontinental*, 319 I.C.C. 792, 803 (1963). See also, *E. Brooks Matlack, Inc. v. United States*, 119 F.Supp. 617 (E.D.Pa. 1954)."

In **Ringsby,** as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in **Ringsby** that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those

portions of the **same exhibits** reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman **can** perform the type and quality of service proposed (p. 586), but the **identical exhibits** were found to have **no probative value** when cited by protestants to support their challenge that Bowman **cannot** perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It prelicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received

emphasis by the Examiners but no consideration by the Division.

19. As stated in **Baltimore & O. R.R. v. United States,** 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service be-

tween any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing *West Brothers, Inc., Extension—Baton Rouge, La.* (1969), 108 M.C.C. 485, 489, and *Ayers, Extension—Cheyenne, Wyo.* (1965), 99 M.C.C. 795, 797. **West** is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other pro-

ceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. **West** was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts are not concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative **rulings** is essential, for to adopt different standards for similar situations is to act arbitrarily.' " *HC&D Moving & Storage Company v. United States*, 298 F.Supp., at 751, quoting from *Dixie Highway Express, Inc. v. United States* (S.D. Miss. 1967), 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of

existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the court in *Campbell Sixty-Six Express, Inc. v. United States, supra.* In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of *Eastern Central Motor Carriers Ass'n v. United States* (D.C. 1965), 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The court relied upon *Eastern* and *Nashua Motor Express, Inc. v. United States* (N.H. 1964), 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the court found that such conclusion was "in the legal sense, 'arbitrary and capricious'." These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

prior Commission decisions. They cite *Braswell Motor Freight Lines, Inc., Extension—Atlanta* (1966), 100 M.C.C. 482, but in that case the Commission found that:

> "* * * most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits **are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise."** 100 M.C.C. at 493.

Thus, in **Braswell,** the Commission criticized protestants for **failing** to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they **did** present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite *T.S.C. Motor Freight Lines, Inc. v. United States* (Tex. 1960), 186 F.Supp. 777, aff'd sub nom. *Herrin Transportation Co. v. United States,* 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman applica-

tion, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying **all** the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

Judgment is being entered today permanently suspending, annulling and setting aside the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension—Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); declaring said orders to be void; and permanently restraining and enjoining the Commission from issuing said Certificates of Public Convenience and Necessity.

This . . . day of September, 1973.

PAT MEHAFFY
United States Circuit Judge

JNO. E. MILLER
U. S. Senior District Judge

PAUL X. WILLIAMS
United States District Judge

APPENDIX A

Status of Jones Truck Lines, Inc.

Jones Truck Lines, Inc. (Jones), MC-111231 (Sub-No. 67) filed on June 14, 1965, its application for extension of its present authority (1) between Atlanta, Ga., and Texarkana, Ark. (and intermediate points between Birmingham and Greenville, Miss., and on U.S. 82 in Arkansas); (2) between Texarkana, Ark., and Sherman, Texas (and all intermediate points); (3) between Birmingham, Ala., and Memphis, Tenn. (no intermediate points);

and (4) between Texarkana, Ark., and Dallas, Texas (all intermediate points). Service was restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone, but not on traffic moving through Memphis and its commercial zone on the one hand, and on the other, points east of the Mississippi River.

Throughout the hearings in the consolidated applications, Herrin Transportation Co., MC-1124 (Sub-No. 206), Jones, Bowman and Johnson were commonly referred to as "The Trinity," and filed with the court a joint abstract of the evidence in behalf of "The Trinity," containing seven large volumes. The application was submitted to the Hearing Examiners along with the other nine applications, and all were denied on the ground that the applicants had failed to establish that the present or future public convenience and necessity require the operations proposed in their respective applications.

In reviewing the report and recommendations of the Hearing Examiners, served Nov. 19, 1969, Division 1 at page 601 of Exhibit 1 to the original complaint, stated: "(c) there is not, in our opinion, sufficient traffic to sustain all of the additional motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest."

In its findings of fact the Commission at page 612 found that Jones, along with other applicants, had failed to establish the present and future public convenience and necessity, and that the applications should be denied. Accordingly, on December 30, 1971, the Commission granted only the applications of Red Ball, Bowman and Johnson, and denied all others.

Jones petitioned the Commission to reopen the hearing, and on September 6, 1972, the petition was granted and the ap-

plication reopened for further hearing. In the petition Jones contended that there is a need for some additional services and that the volume of traffic shown to be moving would not sustain the added services and operations proposed by eight applicants; that Jones' application should be granted either in addition to those granted, or in lieu of the grant of authority to Red Ball; that that in choosing Red Ball over Jones, the Commission failed to appreciate that the two carriers served different areas; that Jones received more support from connecting carriers than any of the other applicants; that only nine carriers remain as active protestants to the Jones application, and that these are nine of the largest carriers in the United States, and therefore a grant of authority to Jones would not materially affect their operations, and that the grants to Red Ball, Bowman and Johnson without a grant to Jones "strikes a death blow to one of the oldest carriers in the Midwest Central South."

A number of protestants replied to Jones' petition, and charged that the thrust of Jones' petition is that a grant of its application should be based upon the number of witnesses produced rather than upon probative evidence of public need or adequacy of existing service.

Upon the reconsideration, the Commission on December 6, 1972, decided that its order of December 30, 1971, denying the application should be set aside and Jones should be granted authority with certain restrictions.

It is interesting to note that according to Exhibit 1 to the original complaint, Division 1 of the Commission was composed of Commissioners Murphy, Deason and Gresham. Division 1, acting as an Appellate Division, on the date the former report and order were considered, was composed of Commissioners Murphy, Hardin and Gresham. The order of December 6, 1972, reveals that Commissioner Hardin dissented. In his dissent he stated:

"Commencing with my initial review of the record in the consolidated Herrin case, which review occurred prior to the entry of the September 1, 1972, order [the order in which an Appellate Division denied and disposed of certain pleadings as therein set forth] referred to in footnote 5 to the majority report, I became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications. Therefore, I did not approve the September 1, 1972, order. Further, I did not approve the entry of the October 2, 1972, order, also referred to in footnote 5, wherein a majority of the Commission determined that this massive consolidated proceeding involving 'what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission,' did not involve issues of general transportation importance.

"I remain of the opinion that the applications of Red Ball, Bowman, and Johnson granted in the Herrin case should be denied. Most certainly, the record will not support the grant of any authority to Jones. Accordingly, I dissent."

On June 29, 1973, the plaintiffs filed their motion in this court for leave to serve and file a supplemental complaint pursuant to Rule 15(d), Fed.R.Civ.P. In the motion plaintiffs referred to the allegations contained in their original complaint filed October 5, 1972, and the prayers for relief contained therein; that subsequent to the filing of the original complaint, the ICC had caused to be issued three additional orders which affect and are material to the issues in this cause. The purpose of the supplemental complaint was to bring before the court for review the subsequent orders and reports issued by the Commission, and for the same relief against the defendants as prayed for in the original complaint, and seeks to set aside, vacate, suspend, enjoin and annul those orders subsequently entered

in Docket No. MC-111231 (Sub-No. 67) that would authorize the issuance of an additional Certificate of Public Convenience and Necessity as described therein. A copy of the proposed supplemental complaint was attached to the motion, which contains various allegations and plaintiffs' contentions, and prays that the court issue a temporary restraining order to remain in force and effect until a hearing and determination by the court, and to prevent the report and orders of the Commission from becoming final and effective; to prevent the Commission from issuance of a Certificate of Public Convenience and Necessity to Jones, and that upon a final hearing and determination of the action, that the Commission be permanently enjoined and prohibited from issuing of the Certificates to successful applicants, or in the alternative, that the matter be remanded to the Commission for appropriate action under the applicable facts and law.

On the same day the motion was filed, the court ordered that a full hearing on the motion and other incidental questions that may arise therein or therefrom be held at Fort Smith, Ark., beginning at 10:00 a.m. on Tuesday, July 24, 1973. On July 16, 1973, a motion of intervening defendant Johnson was filed to dissolve the temporary restraining order; to convene a three-judge court to hear and determine plaintiffs' application for preliminary injunction and motion to file supplemental complaint.

On July 19, 1973, Daisy Manufacturing Company and 69 others filed a motion to intervene as defendants, and if allowed to intervene, to oppose the motion to file supplemental complaint, and if supplemental complaint is allowed to be filed, that they be allowed to file a motion to dismiss the complaint, and to intervene to oppose granting of any temporary restraining order against the issuance of the Jones certificate, and if the court allows the filing of the supplemental complaint and they do not prevail upon their motion to dismiss, that they be allowed to file answer.

On July 23, 1973, Johnson also filed a pleading termed "Opposition to Plaintiffs' Motion to File Supplemental Complaint." On the same date, Red Ball filed its motion to dissolve the temporary restraining order entered November 7, 1972 (350 F.Supp. 545), and to grant plaintiffs' application for preliminary injunction and to dismiss the motion to file supplemental complaint.

Early on the day of the hearing, July 24, Bowman filed its objections to the motion of plaintiffs to file a supplemental complaint.

All of the motions and objections were argued orally by the attorneys for the various parties, and were submitted "upon the complete record heretofore filed in this case, together with all exhibits, briefs and arguments of counsel for the various parties." At the conclusion of the hearing the court entered an order denying the motion without prejudice.

Following the overruling of the motion of plaintiffs to file supplemental complaint, the attorney for Jones was allowed to and did withdraw all motions filed by intervenor Daisy Manufacturing Company.

73-1055

JAN 8 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

Nos. 73-1069 73-1070

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION; BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT INC.; and LORCH-WESTWAY CORPORATION, et al.,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas, Fort Smith Division

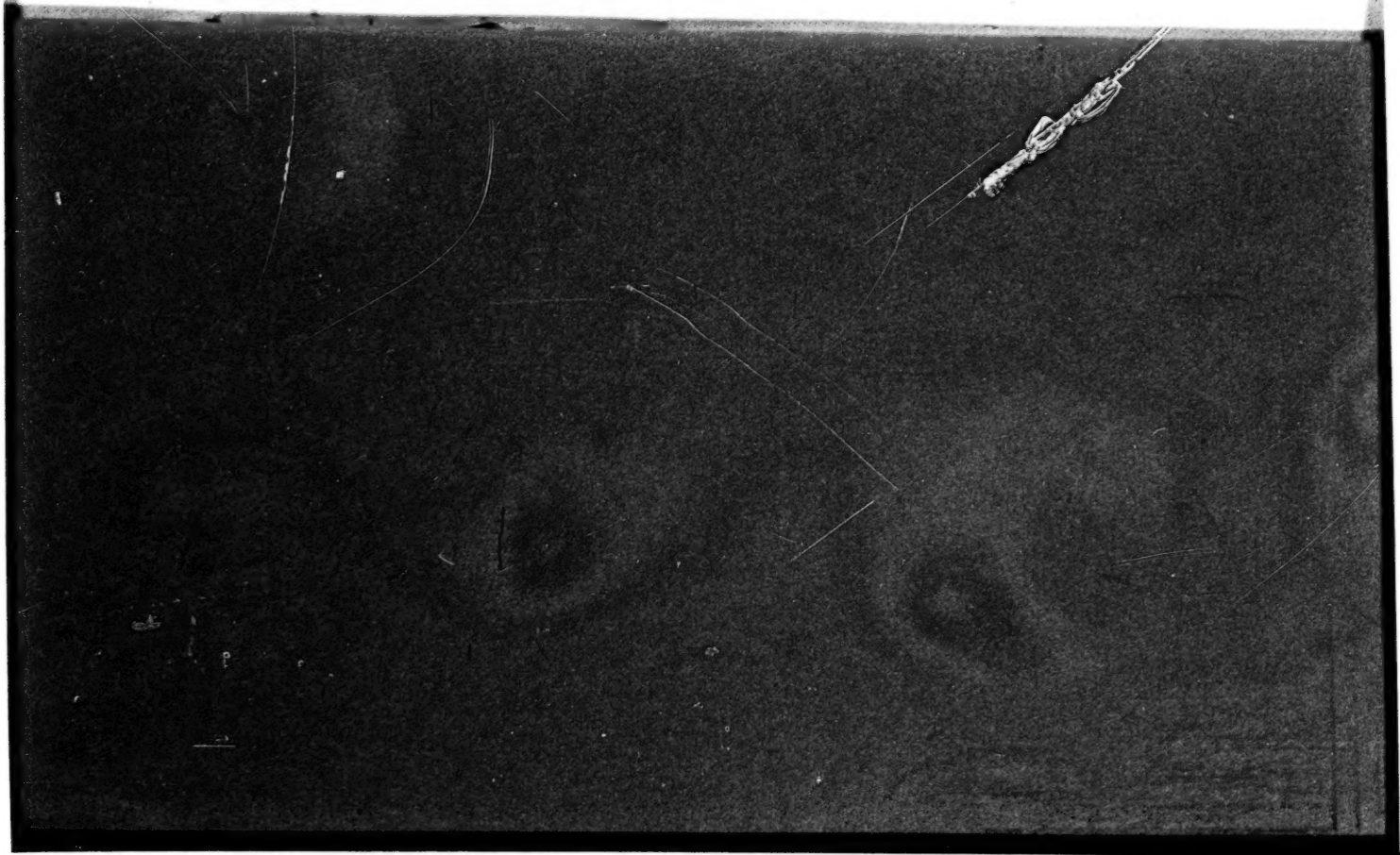
JOINT APPENDIX TO JURISDICTIONAL STATEMENTS

MAURICE F. BISHOP
60109 Frank Nelson Building
Birmingham, Alabama 35203
For Bowman Transportation, Inc.

DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N. W.
Washington, D. C. 20006
For Johnson Motor Lines, Inc.

SANDER W. SHAPIRO
JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767
For Red Ball Motor Freight, Inc.

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
Washington, D. C. 20006
For Lorch-Westway Corp., et al.



ERRATA

1. Disregard Joint Appendix B pages 133 through 148, inclusive, as they repeat pages 117 through 132, inclusive.

2. Disregard Joint Appendix B pages 213 through 228, inclusive, as they repeat pages 197 through 212, inclusive.

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APPENDIX A

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The Statutes Involved

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(1) 49 United States Code Annotated, preceding §1 note, §301 note, §901 note, and §1001 note.

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

(2) 49 United States Code Annotated, Sections 17(4) and (5)

Powers of divisions, boards, etc.; effect of orders, etc.

(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under chapter 8 of this title, persons specified in section 305(e) of this title), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof.

(3) 49 United States Code Annotated, Sections 307(a) and (b).

§ 307. Issuance of certificate—Issuance authorized to qualified applicants for regular routes and between fixed termini

(a) Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

Certificate not to confer proprietary or property rights in highway

(b) No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways. Feb. 4, 1887, c. 104, Pt. II, § 207, as added Aug. 9, 1935, c. 498, 49 Stat. 551.

(4) 5 United States Code Annotated, Sections 556, 557 and 706.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 386.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554 (d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding

employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 387.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.

(5) 28 United States Code Annotated, Sections 2284 (1) and (5)

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 968; June 11, 1960, Pub.L. 86-507, § 1(19), 74 Stat. 201.

APPENDIX B

Report and Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served January 24, 1972, 114 M.C.C. 571

Served January 24, 1972

M-12267

INTERSTATE COMMERCE COMMISSION

No. MC-1124 (SUB-NO. 206)[1]

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.[2]

Decided December 30, 1971

1. In No. MC-2229 (Sub-No. 132), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Texarkana, Ark.; (2) between Jackson, Miss., and Atlanta, Ga.; and (3) between Meridian, Miss., and Tuscaloosa, Ala., subject to a restriction and certain conditions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
2. In No. MC-94201 (Sub-No. 56), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes generally extending (1) between Mobile, Ala., and Houston, Tex.; (2) between Poplarville, Miss., and Baton Rouge, La.; (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59; (4) between Tuscaloosa, Ala., and Fort Worth, Tex.; (5) between Memphis, Tenn., and Topeka, Kans.; (6) between Memphis, Tenn., and Little Rock, Ark.; (7) between West Memphis, Ark., and Little Rock, Ark.; (8) between Little Rock, Ark., and Greenville, Miss.; (9) between Houston, Tex., and Dallas, Tex.; and (10) between Little Rock, Ark., and Texarkana, Tex., subject to a condition and certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
3. In No. MC-106401 (Sub-No. 18), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Fort Worth, Tex.; (2) between New Orleans, La., and Houston, Tex., and (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., subject in parts (1) and (2) to certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

[1] This report also embraces the eight applications identified in appendix A to this report. In the absence of exceptions, the recommended order with respect to the application of Roadway Express, Inc., in No. MC-2202 (Sub-No. 273), became effective by operation of law. By order entered December 18, 1969, McLean Trucking Company was substituted as applicant in No. MC 1124 (Sub-No. 26) in lieu of Herrin Transportation Company.

[2] Retitled McLean Trucking Company Extension—Atlanta, Ga.

4. In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), public convenience and necessity found not shown to require the operations proposed. Applications denied.

Maurice F. Bishop, James B. Blair, W. T. Brunson, John P. Carleton, William A. Chestnutt, R. W. Collinsworth, David Crockett, Donald E. Cross, Douglas Faris, Leroy Hallman, William P. Jackson, Jr., Claude N. Knox, A. Alvis Layne, William E. Livingstone III, Donald B. Lockridge, Emmet McCaffery, Kim D. Mann, Charles D. Matthews, Carl L. Phinney, Jerry C. Prestridge, Ralph W. Pulley, Jr., Robert S. Richard, Harry G. Silleck, Jr., Thomas G. Sloan, Samuel W. Taylor, and *William O. Turney* for applicants, and for certain of the applicants as protestants to other applications.

M. Ward Bailey, Richard A. Bishop, Lennox O. Boyles, Homer S. Carpenter, Drew L. Carraway, James N. Clay III, Morris G. Cobb, John A. Crawford, Paul M. Daniell, Lewis B. Doggett, S. Earl Dove, James H. Epps III, Dan Felts, John S. Fessenden, Charles L. Ford, Jr., Robert W. Gerson, Charles O. Gillogly, Richard M. Gleason, Wentworth E. Griffin, Stephen L. Grossman, W. F. Goodwin, G. F. Gunn, Jr., Harold G. Hernly, Harold G. Hernly, Jr., John C. Henderson, Clifford E. Hillerby, Rollo E. Kidwell, B. W. Latourette, Jr., Leon E. Ledford, W. C. Mauldin, J. E. May, Harold D. Miller, Jr., James W. Nisbet, V. R. Oldenburg, Guy H. Postell, Sol H. Proctor, John M. Records, Lee Reeder, R. J. Reynolds, Jr., R. J. Reynolds III, Lloyd M. Roach, Phillip Robinson, Clifford E. Sanders, John Schwab, Alan E. Serby, Keith Y. Sharpe, S. E. Somers, Jr., Mert Starnes, Phineas Stevens, F. T. Stroud, Robert E. Tate, Frank W. Taylor, Jr., Eugene K. Walburn, and *Ed White* for protestants.

Winston M. Haythe, Courts Oulahan, and *Charles S. Rhyne* for interveners in support of the application in No. MC-106401 (Sub-No. 18).

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, DEASON, AND GRESHAM

The examiners recommended that the application of Floyd & Beasley Transfer Company, Inc., be denied. Although this applicant did not take exceptions to this recommendation, it was prevented from becoming effective by operation of law since the exceptions of other parties nominally embraced this proceeding. This application will be disposed of in our findings and order herein, but without further discussion.

DEASON, *Commissioner*:

These proceedings involve eight applications by the same number of motor common carriers to extend their general commodities operations to points generally in that portion of the United States west of Atlanta, Ga., Birmingham, Ala., and Pensacola, Fla., and east of Houston, Dallas, and Fort Worth, Tex. Bowman Transportation, Inc., seeks to extend its operation, in addition to points in the above-described area, to Topeka, Kans., and to Kansas City, Mo.-Kansas City, Kans. The authority sought in each application is fully described in appendix A to this report. With the exception of Deaton, Inc. (which requests irregular-route authority), each applicant has applied for regular-route authority which it proposes to join with the authority it presently holds. Generally speaking, four southwestern carriers (namely, Herrin, Red Ball, Strickland, and Jones) seek to extend their operations to Birmingham and Atlanta, while four southern carriers (viz. Deaton, Baggett, Bowman, and Johnson) would extend their authorized services to the Southwest. The numerous motor carriers described in appendix B oppose the applications.

These applications were heard on a consolidated record, involve what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission, and were the subject of a single report and recommended order by two examiners. The examiners recommended that all of the applications be denied. Exceptions to the order recommended by the examiners were filed by all of the applicants, except Roadway Express, Inc., and Floyd & Beasley Transfer Company, Inc. Exceptions were also filed by a number of shippers[1] intervening in support of the application of Johnson Motor Lines, Inc. Both the exceptions of Johnson Motor Lines, Inc., and the intervening shippers embrace a request for oral argument. Additionally, "conditional" exceptions were filed jointly by Campbell Sixty-Six Express, Inc., and Gordons Transports, Inc., protestants. These protestants described in appendix C submitted replies to applicants' and interveners' exceptions.[2] Johnson Motor Lines, Inc., filed a reply to the above-described "conditional" exceptions and to the exceptions of other applicants; while Bowman

[1] By order entered March 30, 1970, 41 named petitioners were permitted to intervene in No. MC-10641 (Sub-No. 18), Johnson Motor Lines, Inc., Extension—Dallas, Tex., with the right to appear and participate in all further proceedings therein, and their jointly filed tendered exceptions were accepted for filing.

[2] As noted in appendix C, the reply by ET & WNC Transportation Company to the exceptions of applicants in Nos. MC-61177 (Sub-No. 304) and MC-94201 (Sub-No. 56) was tendered late

Transportation, Inc., has tendered a late reply to the exceptions of Gordons Transports, Inc. Our conclusions differ in three of the embraced proceedings from those recommended by the examiners. The parties will sometimes hereinafter be referred to by appropriate short titles.

PLEADINGS

The contentions of the parties which filed the numerous exceptions and replies are set forth in appendix D. In general, of the eight applicants filing exceptions, two (Deaton and Baggett) filed "conditional" exceptions stating that a grant of their applications would be a necessary corollary to a grant of any of the other applications. They wish to avoid a situation in which their applications would stand finally denied while one or more of the other consolidated applications are pending final decision. Another applicant (Jones) asserts that it should receive at least a partial grant of authority since the record allegedly demonstrates a need for additional service on commodities requiring refrigeration, and it is willing to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature-controlled trailers. Applicant Bowman maintains that it should be granted the authority sought, or in the alternative (inasmuch as its proposal is divisible), that it should be granted authority to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Springfield, Carthage, and Kansas City, Mo. The remaining applicants (Herrin,[6] Johnson, Red Ball, and Strickland) contend generally that they should be authorized to provide the services as proposed.[7] Collectively, applicants except to the basic approach taken by the examiners in assertedly considering those applications on the erroneous concept that either all must be granted or all must be denied. It is averred that the examiners should have evaluated, and made findings and conclusions relating to, each application as a separate and independent matter; and that the supporting testimony should not be treated only in relation to the commodities shipped to the substantial exclusion of the territories and points involved. The intervening shippers, in general, maintain that an affirmance of the examiners' report would result in a monopoly, contrary to the

[6] As noted in footnote 1 in appendix A, Herrin has been merged into McLean Trucking Company. Although the latter has been substituted as applicant herein, the former's name will be used for the sake of continuity of discussion.

[7] It is noted that Red Ball indicates a willingness to have "Performance Report" conditions imposed on any grant of authority to it.

interests of business in the area served or proposed to be served by Johnson. In their jointly filed "conditional" exceptions Campbell and Gordons represent that the applications of Bowman, Baggett, Johnson, Red Ball, and Jones present problems with respect to the joinder of regular- and irregular-route service; and that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments.

Protestants, replying to applicants' and interveners' exceptions, maintain generally that the findings and recommendations of the examiners are fully supported by the evidence and should be affirmed. In separate replies to the jointly filed "conditional" exceptions of Campbell and Gordons, Johnson asserts that these carriers' contentions regarding joinder problems are without merit, and Bowman submits that its proposed restrictions are acceptable and that, inasmuch as it has applied for appropriate authority to convert its existing irregular-route authority, the issue of joinder problems is moot as to it.[2]

The evidence, the recommendations of the hearing examiners, and the pleadings have been considered. Inasmuch as no exception is taken to the examiners' summary of the evidence presented by the protestants as to their authorities, equipment, and operations, this portion of the examiners' report is hereby adopted and is set forth in appendix G to this report.

PRELIMINARY MATTERS

Johnson and the shippers intervening in support of its application request oral argument, citing the complexity of the case and its importance in terms of public interest as reasons. In reply to these requests, certain protestants[3] submit that the issues are not complicated and relate principally to a question of fact, and that the request for oral argument should therefore be denied. Inasmuch as the parties seeking oral argument have not shown either that it is required or that it would be beneficial in reaching our determination in these proceedings, this request is hereby denied.

[2] In a report and recommended order in No. MC-94201 (Sub-No. 86) served March 29, 1971, which became effective by operation of law on April 28, 1971, Bowman's application seeking the conversion of its irregular-route authority in its certificates Nos. MC-94201 and MC-94201 (Sub-Nos. 35 and 63) was granted. A certificate authorizing the corresponding regular-route operations was issued July 13, 1971, in Bowman's lead docket number.

[3] Mercury and East Texas in their joint reply to the exceptions of applicants and intervening shippers, and Akers, Briswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West in their joint reply to the exceptions of Johnson.

The joint reply filed by certain protestants[1] to Bowman's exceptions contains a renewed motion to strike appendixes A and B to exhibit 1985 on the grounds that such evidence represents improper rebuttal evidence and that the method of its preparation makes the data unreliable. We agree with the examiners' finding that the challenged appendixes constitute proper rebuttal to information and transit time studies presented by protestant with respect to certain of Bowman's interline services. We also concur in the examiner's conclusion that the objection as to the method of preparation of the questioned appendixes goes to their weight and not their admissibility. The examiners' ruling is hereby sustained.

The replies of applicant Bowman and protestant ET & WNC were both filed 1 day after the due date. Inasmuch as no party has been prejudiced by that delay and because their positions are entitled to full consideration in this decision, those late-tendered replies are hereby accepted for filing.

As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969); and *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties[1] to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations.

The interveners in support of Johnson's application in No. MC-106401 (Sub-No. 18) and applicant Bowman in No. MC-94201 (Sub-No. 56) have separately filed petitions requesting leave to supplement their exceptions, embracing tendered supplemental exceptions. A number of protestants have replied to these petitions, and request an opportunity to reply to the supplemental exceptions should they be accepted for filing.[2] Petitioners seek the acceptance

[1] Roadway, West, Transcon, Holloway, T.I.M.E., Consolidated, Akers, Yellow Freight, and Braswell.

Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Sata Motor Freight Line, Inc., and Terminal Transport Co., Inc.

[2] Replies to the petition in No. MC-106401 (Sub-No. 18) were filed jointly by Mercury and East Texas, separately by Ryder, jointly by Akers, Braswell, Campbell, Gordons, Roadway Express, Inc., Roadway Express of Mississippi, Inc., T.I.M.E., and Transcon. A reply to both petitions was filed by Jack Cole-Dixie Highway Company, while Mercury Freight Lines, Inc., and East Texas filed a joint reply to Bowman's petition in No. MC-94201 (Sub-No. 56).

for filing of their supplemental exceptions on the grounds that certain economic pronouncements have urged that regulatory agencies should consider competition as a "critical factor" when performing their adjudicative functions, and that certain recent court and Commission decisions should be considered in determining the issues here involved. Generally, protestants reply that this Commission's General Rules of Practice do not permit the filing of supplemental exceptions; that the economic pronouncements are immaterial and irrelevant; and that, for the most part, the decisions cited were available when the original exceptions were filed. As pointed out by certain protestants, an earlier petition of several of the opposing parties to reopen this proceeding to submit evidence of authorities granted since the hearing was denied on the grounds that the examiners would take official notice of any Commission action and that no useful purpose would be served by adding these pleadings to this already voluminous record. Whereas we will take official notice of all pertinent evidence and Commission decisions, we see no reason to prolong the disposition of this proceeding and, therefore, the petitions will be denied and the tendered supplemental exceptions will be rejected.

APPLICANTS EVIDENCE

Herrin holds regular- and irregular-route motor common carrier authority to transport general commodities in an area bounded generally on the north by Little Rock, Ark., Memphis, Tenn., and Atlanta, Ga.; on the south by Houston, New Orleans, La., and Pensacola and Jacksonville, Fla.; on the west by Fort Worth, Dallas, and Waco, Tex.; and on the east by Savannah, Ga. Its authorized routes, which include service to numerous intermediate points, extend between (1) Houston and New Orleans through Orange, Tex.; (2) Houston and Dallas-Fort Worth; (3) Houston and Waco; (4) Dallas and New Orleans through Lufkin, Tex., and De Ridder, La.; (5) Dallas and Monroe, La., through Shreveport, La.; (6) Shreveport and New Orleans through Alexandria, La.; (7) New Orleans and Baton Rouge, La.; (8) Shreveport and Memphis through El Dorado, Ark.; (9) El Dorado and Little Rock; and (10) New Orleans and Jacksonville, through Crestview, Marianna, Tallahassee, Pensacola, and Lake City, Fla., and numerous points in south Georgia, including Macon, Savannah, Valdosta, Thomasville, and Waycross.

Herrin's routes into Macon and Savannah extend along U.S. Highway 80 through Jackson, Miss., Montgomery, Ala., and Columbus, Ga., which points are traversed for operating convenience only. It operates between Memphis and Jacksonville, traversing (for operating convenience only) Tupelo, Miss., Birmingham, and Columbus. Herrin also holds authority to operate between Macon and Atlanta, limited to traffic moving to, from, or through Monroe, New Orleans, Baton Rouge, and Memphis, and further restricted against the transportation of traffic moving between Little Rock and Memphis, and their respective commercial zones, on the one hand, and, on the other, Atlanta and its commercial zone. Applicant has been granted alternate-route authority generally over Interstate Highways 85 and 20 and U.S. Highway 78 to and from Atlanta which eliminates the necessity of observing the Macon gateway on Atlanta Traffic.[1] This alternate-route authority is restricted to the transportation of shipments moving to, from, or through Monroe, Baton Rouge, or New Orleans. It now operates to or through Birmingham, Mobile, and Montgomery, Ala., Jackson, Columbus, Atlanta, and Pensacola. The last two points are service points.

Herrin maintains terminals at Houston, Beaumont, Dallas, and Waco, Tex.; Shreveport, Lake Charles, Lafayette, New Orleans, Baton Rouge, and Alexandria, La.; El Dorado; Memphis; and Jacksonville. Commission agency stations are maintained at Houma, Abbeyville, and Monroe, La.; Macon, Savannah, and Waycross, Ga.; and Pensacola. If its application is granted, it will establish terminals at Atlanta, Columbus, Birmingham, Mobile, Montgomery, and Jackson. Additionally, it will reestablish a terminal at Little Rock. Herrin operates 252 tractors (including 5 sleeper cabs), 441 trailers, and 225 trucks. It would add 41 tractors, 80 trailers, and 67 trucks to its fleet upon approval of this application.

By this application, Herrin seeks (1) to serve Birmingham, Mobile, Montgomery, Columbus, and Jackson as intermediate points on its presently authorized routes; (2) to remove the restriction on service at Pensacola to traffic moving through New Orleans; (3) to operate over all feasible routes between the territory it now serves, on the one hand, and, on the other, Atlanta; and (4) to remove the restriction against the transportation of traffic between Memphis and Little Rock, on the one hand, and, on the other, Atlanta.

[1] See certificate No. MC-31389 (Sub-No. 119) issued March 19, 1970.

Herrin introduced proposed operating schedules between Dallas, Houston, New Orleans, Memphis, Baton Rouge, and Shreveport, on the one hand, and, on the other, Atlanta, Birmingham, Columbus, Mobile, Montgomery, Jackson, and Pensacola. The schedules are based on a 41-mile per hour average running time. To illustrate, between Dallas and Atlanta (815 Herrin operating miles) and between Houston and Atlanta (813 operating miles), Herrin proposes first-afternoon service on volume traffic and second-morning delivery on less-than-truckload (LTL) traffic, with vehicle running times of 19 hours and 55 minutes, and 19 hours and 49 minutes, respectively. On volume shipments, it proposes first-morning service between Birmingham, Dallas, and Houston; first-afternoon between Columbus, Dallas, and Houston; first-afternoon between Dallas and Mobile; first-morning between Houston and Mobile; first-afternoon between Montgomery, Dallas, and Houston; and first-morning service between Jackson, Dallas, and Houston. On LTL traffic, Herrin proposes first-afternoon service between Birmingham, on the one hand, and, on the other, Dallas and Houston; second-morning between Columbus, on the one hand, and, on the other, Dallas and Houston; first-afternoon between Mobile and Dallas; first-morning between Mobile and Houston; second-morning between Montgomery and Dallas; and first-afternoon between Montgomery and Houston; and first-morning between Jackson, on the one hand, and, on the other, Dallas and Houston. Between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, New Orleans and Memphis, Herrin would offer first-morning service on truckload shipments. Applicant proposes the same service on LTL shipments between those points, except between Atlanta and New Orleans which will be first-afternoon. First-morning service is proposed on both truckload and LTL traffic between Pensacola and New Orleans and first-morning service would be provided between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, Baton Rouge and Shreveport, on both LTL and truckload shipments, with the exception that service between Atlanta and Shreveport on LTL traffic will be second-morning. Points in Texas and Louisiana served by Herrin and not specifically named would receive 1-day later service than movements to or from New Orleans on LTL. The proposed schedules on volume shipments would be the same to other Louisiana and Texas points as that to and from Houston. The Arkansas points served by Herrin and not named specifically would be served 1 day later than Memphis on LTL and the same as

Memphis on volume shipments. Applicant would, at least initially, operate sleeper cabs between Atlanta and Dallas-Fort Worth. Between Atlanta and New Orleans, service would be provided either with sleeper cabs or by driver relay.

Red Ball holds motor common carrier authority to transport general commodities, with the usual exceptions,[1] over regular routes within a territory generally bounded by Denver, Colo., and Santa Fe, N. Mex., on the west; Mobile, Jackson, and Memphis, on the east; Kansas City and Denver, on the north; and Houston, New Orleans, and Mobile, on the south. Applicant's operations extend over regular routes generally (1) between Denver and Dallas, through Pueblo, Colo.; Clayton, N. Mex.; Amarillo and Wichita Falls, Tex.; Lamar, Colo., and Boise City, Okla.; (2) between Denver and Memphis through Oklahoma City, Okla., and Little Rock; (3) between Dallas-Fort-Worth and Houston; (4) between Houston, Dallas, Fort Worth, and Jackson, through Shreveport and Monroe; (5) between Dallas-Fort Worth and Memphis, Tenn., through Shreveport and Little Rock; (6) between Dallas-Fort Worth, on the one hand, and, on the other, Baton Rouge and New Orleans, through Shreveport; (7) between New Orleans, Baton Rouge, Jackson, and Memphis; (8) between Memphis and Kansas City, Mo.-Kansas City, Kans., through Little Rock and Fort Smith; (9) between New Orleans and Baton Rouge, on the one hand, and, on the other, Natchez, Vicksburg, and Jackson, Miss.; (10) between Memphis and Jackson, Vicksburg, Natchez, and Gulfport, Miss.; (11) between Dallas, Houston, Fort Worth, and Mobile, through Shreveport, Monroe, and Jackson, and also through Baton Rouge and New Orleans; (12) between New Orleans and Baton Rouge, on the one hand, and, on the other, Kansas City, Mo.-Kansas City, Kans.; and (13) between Houston and New Orleans through Baton Rouge, Lake Charles, and Beaumont. Approximately 1,450 points in 10 States (not including Kansas City, Kans., and applicant's explosive authority to Pensacola, Fla.) are served direct by Red Ball. The points include approximately 550 in Texas, 475 in Louisiana, and 125 in Arkansas.

Ninety-two terminals are maintained by applicant throughout its system, with 44 located in Texas, 17 in Louisiana, 8 in each of Arkansas and Colorado, 6 in New Mexico, 4 in Mississippi, 2 in Oklahoma, and 1 each in Missouri, Tennessee, and Alabama. If the application is granted, Red Ball proposes to establish terminals at Atlanta, Birmingham, and Greenville, Miss. It operates 654 tractors

[1] Red Ball is, however, authorized to transport explosives

and 1,520 trailers, including 23 convertavans and 47 refrigerated, 20 insulated, and 40 open-top trailers; and it will add to its fleet if necessary.

Red Ball proposes to extend its authority (1) between Texarkana and Greenville, Birmingham, and Atlanta; (2) between Jackson and Atlanta; and (3) between Meridian, Miss., and Tuscaloosa, Ala., for the purposes of joinder only, restricted against transportation between Memphis and its commercial zone, on the one hand, and, on the other, Greenville, Birmingham, or Atlanta, and the respective commercial zones of each. The authority sought, if granted, will be tacked so that applicant would be able to provide service between Atlanta, Birmingham, and Greenville, on the one hand, and, on the other, its authorized points (except between Greenville and Memphis).

On LTL traffic, Red Ball proposes next-morning service between Dallas-Fort Worth and Greenville; between Texarkana and Shreveport, on the one hand, and, on the other, Birmingham and Greenville; between New Orleans and Baton Rouge, on the one hand, and, on the other, Greenville; between Baton Rouge and Birmingham; between Monroe and Little Rock, on the one hand, and, on the other, Birmingham and Greenville; between Jackson, on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; and between Atlanta and Birmingham. Second-morning service is proposed from Denver to Greenville; between Texarkana and Amarillo, Tex., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; between Dallas-Fort Worth, on the one hand, and, on the other, Atlanta and Birmingham; between Shreveport and Atlanta; between New Orleans, on the one hand, and, on the other, Atlanta and Birmingham; between Baton Rouge and Atlanta; between Monroe and Atlanta; and between Little Rock and the one hand, and, on the other, Atlanta and Birmingham; and from Greenville to Denver. The schedules would involve an additional day for service at points beyond the above-described terminals. Truckload traffic will be handled on a call-on-demand basis. Applicant's proposed schedules are based on an average over-the-road speed of 40 miles per hour. Single-driver operations and two-man teams will be used between Denver, Amarillo, Dallas, Fort Worth, Texarkana and Shreveport, on the one hand, and, on the other, Birmingham and Atlanta. Red Ball purposes 17 westbound schedules, 18 eastbound, 1 northbound (from New Orleans and Baton Rouge to Greenville), 1 southbound (from Greenville to Baton Rouge

and New Orleans), and 1 schedule between Jackson and Greenville.

Deaton holds irregular-route motor common carrier authority to transport specified commodities. It is authorized, under its general-commodity authority, to transport traffic (1) between Birmingham and points in Alabama within 65 miles thereof, on the one hand, and, on the other, New Orleans and points in Mississippi; and (2) between Atlanta, on the one hand, and, on the other, eight specified Alabama points which are located within 65 miles of Birmingham, restricted against the transportation of traffic between Atlanta and Birmingham. Its general-commodity authority has been converted from irregular-route to regular-route authority. Under its remaining authority it transports specified commodities generally between points in Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Applicant maintains terminals at Atlanta; Birmingham, Mobile, and Anniston, Ala.; Columbus, Greenville, Tupelo, Jackson, and Natchez, Miss.; New Orleans; Memphis; and Tampa, Fla. It proposes to establish terminals at Dallas, Houston, Beaumont, Monroe, Baton Rouge, and Shreveport. A substantial fleet of equipment is operated by applicant, and if its application is granted Deaton would add 20 tractors and 40 trailers.

Deaton proposes to tack the authority sought with some of its existing authority and render a call-on-demand service with an anticipated transit time of 2 days from Houston and Beaumont to points in Georgia and Alabama. Volume traffic tendered at a certain time of day, handled by a two-man operation, might be delivered by the first afternoon. Some of the LTL traffic, also handled by a two-man operation, would be delivered on either the second day or third morning. Between Atlanta, Anniston, and Birmingham, on the one hand, and, on the other, Monroe, Shreveport, and Baton Rouge, La., and Orange, Beaumont, Texas City, and Houston, Tex., truckload traffic would be delivered in 1 day and LTL traffic would receive 2-day service. From Atlanta to Dallas and Fort Worth, volume traffic would be delivered on the next afternoon and LTL traffic would be delivered on either the second day or third morning. Deaton believes that the traffic it presently interlines would support one schedule of LTL traffic a day from Atlanta to Monroe, Dallas, and Fort Worth and one a day from Birmingham and Anniston to the Baton Rouge and Houston areas.

Strickland holds regular-route motor common carrier authority to transport general commodities over a network of routes extending

between the Northeast, the Midwest, and the Southwest. Its regular routes in portions of Texas, Arizona, and Louisiana extend to the major points of Memphis; St. Louis, Mo.; Milwaukee, Racine, and Kenosha, Wis.; Aurora, Joliet, and Chicago, Ill.; Detroit, Mich.; Cleveland, Ohio; Philadelphia, Pa.; Camden, Atlantic City, and South Kearney, N.J.; New York, N.Y.; Bridgeport, Orange, New Haven, and Hartford, Conn.; and Springfield and Boston, Mass. Applicant maintains 35 terminals including those located at Shreveport and Texarkana. If its application is granted, terminals would be established at Atlanta, Birmingham, Jackson, Monroe, and Greenville. It operates 458 tractors, about 1,055 trailers, and 190 trucks.

Strickland seeks authority (1) between Atlanta and Texarkana, over a specified route, serving Birmingham, Greenville, and those points on U.S. Highway 82 in Arkansas, as intermediate points, and (2) between Atlanta and Shreveport, over a specified route, serving Jackson as an intermediate point and Monroe as a point of joinder. The proposed routes would permit service between Atlanta, Birmingham, and Jackson, on the one hand, and, on the other, Strickland's presently authorized points in Arkansas, Mississippi, Louisiana, and Texas through Monroe, Shreveport, and Texarkana.

Numerous schedules to and from the involved major points are proposed by Strickland. All of the schedules propose either 1- or 2-day service. To illustrate, a schedule proposed under route 1 (viz. between Atlanta and Texarkana) would leave Atlanta at 8 p.m., traverse 639 miles at 38 miles per hour, and arrive in Texarkana at 12:50 p.m. of the next day. Another example would be schedule 1017, under route (2) between Atlanta and Shreveport, which would leave Atlanta at 8 p.m., traverse 808 miles in 21 hours and 15 minutes, and arrive in Dallas-Fort Worth at 5:15 p.m. the following day, with second-day delivery expected. The proposed schedules will be performed by two-man teams with sleeper cabs and are direct terminal-to-terminal operations without intermediate stops, with the exception of the peda run between Greenville and Texarkana.

Strickland introduced two abstracts of shipments transported by it in interline service during March 1965. The first, appendix H to exhibit 38, covers 887 shipments weighing a total of 731,892 pounds, which originated at points in Texas, were transported by Strickland from specified Texas points (mostly Dallas), to Memphis, Shreveport, St. Louis, Little Rock, and New Orleans, where they were interlined for delivery to points in Alabama, Florida, Georgia, Mississippi, North and South Carolina, and Virginia. Approximately 250 of these shipments were originated by a carrier other than Strickland and

interlined to the latter at Dallas or another specified Texas point. Applicant here proposes to transport these shipments from the Texas points directly to Atlanta. The second, appendix I to the same exhibit, covers 1,942 shipments weighing a total of 1.4 million pounds which originated at points in Alabama, Florida, Georgia, Mississippi, and North and South Carolina. They were interlined to Strickland at Memphis (approximately 1,850 of the shipments), Little Rock (34), or New Orleans (58), and were transported by applicant to points in Arkansas, Texas, and Louisiana. Approximately 650 such shipments were again interlined for delivery to their ultimate destination points. The average elapsed time from the origin carriers' billing date to the time of Strickland's billing date on 1,855 of these shipments was 3.6 days.

Baggett holds motor common carrier authority to transport general commodities, with certain exceptions, (1) over regular routes which extend generally between Chattanooga, Tenn., Rome, Atlanta, and Columbus, Ga., Florence, Decatur, Birmingham, Montgomery, and Mobile, Ala., and New Orleans, La.; and (2) over irregular routes from Montgomery, Ala., to points in Alabama within 125 miles of Montgomery. It also holds authority to transport explosives between, from, and to specified points and areas in 44 States and the District of Columbia, and specified commodities generally between, from, and to points in Alabama, Florida, Georgia, New Jersey, New York, Pennsylvania, and Tennessee. Additionally, a wholly owned subsidiary and a carrier under common control with applicant hold certain interstate authority.

Baggett maintains 20 terminals, 14 of which are located in Alabama. It proposes to establish terminals at Dallas-Fort Worth, Houston, and Beaumont. With its subsidiary, applicant operates 353 tractors, 856 trailers, and 220 trucks, including tractors used in local service.

Applicant proposes second-morning delivery from Chattanooga, Tenn., Atlanta, Birmingham, and Mobile to Fort Worth, Dallas, and Houston, with dropoffs at Beaumont. An additional day will be required on movements from Baggett's other terminal points.

Bowman holds both regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions) generally from, to, and between points in a territory bounded by Chicago, Ill., and points within 35 miles of Columbus Circle, N.Y., on the north; Miami and Pensacola, Fla., and Mobile, on the south; Memphis and Tuscaloosa, Ala., on the west; and points along the eastern seaboard. Its irregular-route authority to

serve generally points in Florida, Alabama, Georgia, South and North Carolina, Tennessee, Maryland, Illinois, Indiana, and Ohio has been converted to corresponding regular-route authority.[15] As here pertinent, applicant was granted authority to operate over 71 specified routes, the western termini of which are Memphis, Tuscaloosa, Montgomery, and Mobile.

Bowman maintains 25 terminals, most of which are located in the Southeast, including those located at Atlanta, Birmingham, Memphis, Mobile, Montgomery, and Pensacola. It proposes to establish terminals at New Orleans, Baton Rouge, Lake Charles, Shreveport, and Monroe, La.; Beaumont, Houston, Dallas-Fort Worth, Marshall, and Texarkana, Tex.; Vicksburg, Jackson, Meridian, and Greenville, Miss.; El Dorado, Little Rock, Fort Smith, and Jonesboro, Ark.; and Springfield, Carthage, and Kansas City, Mo. Agency stations will be established at Topeka, Kans., Laurel, Miss., and Tuscaloosa, Ala. Its fleet consists of 478 tractors, including 359 sleeper cabs; and 978 trailers. If the application is granted, applicant will add 100 tractors, 100 trucks, and 200 trailers.

By this application, Bowman seeks to extend its operations over a series of regular routes between its present terminal points at Memphis, Atlanta, Birmingham, Montgomery, Mobile, and Pensacola to serve 8 points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas. It does not seek authority to serve between any points west of its presently authorized points. Also, Bowman does not propose to handle traffic originating or interlined at Memphis and moving to Dallas, Fort Worth, or other points in the territory it seeks to serve. However, it indicates that it will handle shipments through Memphis which originate and are received by applicant at points east of Memphis.

Bowman's proposed LTL schedules are based on a 35-mile per hour average over-the-road running time and take into consideration the time required for handling traffic at its terminals. Applicant operates over the highways on weekends, and proposes to use two-man teams with sleeper cabs on all movements between points requiring more than 10 hours driving time. It proposes to render 1- or 2-day service generally between Chattanooga and

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See footnote 8, supra. Also, in August 1968, Bowman acquired a portion of the operating rights of Alabama Highway Express which included, among other authority, the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, *Bowman Transportation, Inc.—Purchase (Portion)—Alabama Highway Express, Inc.* (not printed), decided July 8, 1968.

Memphis, Tenn., and Birmingham, Gadsden (located 50 miles east of Birmingham), Montgomery, and Mobile, Ala., on the one hand, and, on the other, points in the territory it seeks to serve. Applicant introduced exhibits showing that on the 546 shipments moving from its Miami to its Atlanta terminals (744 operating miles) during a specified 1-week period in 1966, the average transit time was 1.9 days; that on the 321 shipments moving from its Birmingham terminal during the same period and delivered or interlined at Charlotte (408 operating miles), the average transit time was 1.5 days; that on 206 shipments moving from its Richmond, Va., terminal to its Memphis terminal (855 operating miles) during the same period, the average transit time was 2.5 days; and that on 26 shipments handled from Birmingham to New York, N.Y. (1030 operating miles) during the 1-week period, the average transit time was 2.8 days.

Johnson holds regular- and irregular-route motor common carrier authority to transport principally general commodities, with the usual exceptions. Its regular routes extend between points in a territory bounded by Boston and Worcester, Mass., and Niagra Falls, Oswego, and Glen Falls, N.Y.,[16] on the north, and Pensacola, Mobile, Pascagoula and Gulfport, Miss., and New Orleans, on the south, generally by way of Providence, R.I., Hartford, Conn., New York, N.Y., Camden, N.J., Philadelphia, Baltimore, Md., Washington, D.C., Richmond, Charlotte, N.C., Atlanta, and Montgomery. Applicant's irregular-route general-commodity authority extends generally to points in New York, New Jersey, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and Florida. As here pertinent, applicant holds irregular-route authority to transport general commodities (with the usual exceptions) between Graniteville and Charleston, S.C., on the one hand, and, on the other, points in South Carolina and Georgia (except between Graniteville and Atlanta). Irregular-route authority to transport specified commodities from, to, and between points in Massachusetts, Rhode Island, Connecticut, and New York is also held by applicant.

Applicant maintains about 35 terminals at principal points on its routes and in its irregular-route territory, including those located at New Orleans, Gulfport, Mobile, Pensacola, Montgomery, Atlanta, Savannah, and Charlotte, its home office and main break-bulk

[16] Review Board Number 5, by order entered December 18, 1970, in No. MC-F-11006, *Johnson Motor Lines, Inc.—Merger—Johnson Motor Lines Corp.*, authorized the merger of the operating rights and the property of Johnson Motor Lines Corp. into Johnson Motor Lines, Inc. The merged operating rights are set forth in certificate No. MC-106401 (Sub-No. 31), issued July 19, 1971.

terminal. Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport. Applicant operates approximately 500 tractors and 1,000 trailers, including 44 temperature-controlled vehicles, and it will add 50 tractors and 100 trailers to its fleet if its application is granted.

Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route. The stated purpose of the proposal is to permit service of an "over-head" nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes. No service is proposed between points on the southern route and points on the northern route. Applicant indicates that it will offer daily, scheduled, LTL service between Dallas and Savannah, by tacking its above-described irregular-route authority with its regular-route authority at Graniteville. Johnson also seeks authority to operate over two alternate routes. It is submitted that one (which is between Shreveport, a point on the northern route, and Baton Rouge, a point on the southern route) would enable applicant to move its empty equipment from the northern route to the southern route to pick up traffic from the Pascagola, Mobile, and Pensacola area. The other (which is between Montgomery and the junction of U.S. Highways 11 and 80 near Cuba, Ala.) would enable applicant, on its northern route, to move eastbound traffic from Dallas through Montomery and Opelika, Ala., making pickups at these two points, and then proceeding to Atlanta.

Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by applicant mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area, from and to points in North Carolina, Wallace, S.C., and points north and east thereof, will break bulk at Charlotte, and move by

two-man teams[7] on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points. Traffic moving to and from points on the southern route and applicant's present terminals of Gulfport, Pascagoula, Mobile, and Pensacola will be handled by schedules originating and terminating in Mobile and Pensacola. Two-man teams will handle the schedules originating and terminating at Mobile, which traffic will move between Pascagoula and Gulfport and the proposed terminals at Beaumont and Houston. A single driver will handle the schedule originating and terminating at Pensacola on the traffic moving to and from Mobile, Pascagoula, and Gulfport, and to and from Baton Rouge. The Mobile schedule will be dispatched through Pascagoula and Gulfport to pick up en route and deliver at Beaumont en route to Houston. Eastbound, the Houston schedule will be dispatched through Beaumont to pick up en route and will stop en route to Mobile at Gulfport and Pascagoula to deliver. The Pensacola schedule will be dispatched through Mobile, Pascagoula, and Gulfport to pick up en route and then proceed to Baton Rouge where it will terminate. Applicant proposes 17 westbound schedules (each schedule representing 1 vehicle) from Charlotte and 7 westbound from Atlanta daily, 5 days a week (excluding holidays). Eastbound, nine schedules would move daily to Charlotte and four would move to Atlanta. One westbound vehicle would be dispatched from Mobile and one from Pensacola. Eastbound, one vehicle would be dispatched from Houston to Mobile and one from Baton Rouge to Pensacola. Additionally, applicant proposes dispatched movements, which are not set up as daily schedules, to handle overflow freight from Charlotte and Atlanta to points on the proposed northern and southern routes. Thus, not including the two above-described dispatched movements from Charlotte and the two from Atlanta, applicant proposes 41 schedules daily, namely: 17 from Charlotte, 7 from Atlanta, 1 from

[7] On March 13, 1966, the change in Johnson's operations to include two-man operations became effective. Applicant introduced a summary of a survey of two-man operations between Charlotte, on the one hand, and, on the other, Pensacola, Mobile, Pascagoula, Gulfport, and New Orleans. Between January 2 and January 26, 1966, applicant's two-man teams made 253 trips between the above-described points in a total of 4,491 hours over 176,115 miles for an overall average of 39.21 miles per hour.

Pensacola, 1 from Mobile, 9 eastbound to Charlotte, 4 eastbound to Atlanta, 1 eastbound out of Houston to Mobile, and 1 eastbound out of Baton Rouge to Pensacola.

Originating and delivering traffic only between Monday and Friday (excluding holidays), applicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve. The 1-day service would generally be rendered only on either the "Express" schedules over the southern route or between Baton Rouge and applicant's southernmost terminals (except New Orleans). To illustrate Johnson's proposal, a shipment moving from Medford (Boston), Mass., over Charlotte to Houston would depart from Medford at 9 p.m. on a Monday and arrive at Charlotte at 9:30 p.m. of the following day. At 33.3 miles per hour, the 816 miles between these terminals would be traversed in 24.5 hours. Four hours would be allowed for break-bulk operations at Charlotte and departure from Charlotte would occur at 1:30 a.m. Wednesday. The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour. Thus, the movement would arrive in Houston at 4:30 a.m. on Thursday.

Jones holds regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions) and specified commodities, including frozen and prepared foodstuffs. Its regular routes extend generally between points within a territory bounded, on the north, by Kansas City and Chicago; on the south by Dallas-Fort Worth and Greenville and Winona, Miss.; on the west by Oklahoma City, Okla., and Wichita, Kans.; and on the east by Memphis. Applicant presently traverses a portion of the proposed routes, viz, generally between Winona and Texarkana, from Winona over U.S. Highway 82 to Texarkana; between Texarkana and Dallas, from Texarkana over U.S. Highway 67 to Dallas; and between Texarkana and Sherman, over U.S. Highway 82. Jones' irregular-route authority generally authorizes the transportation of general commodities within portions of this same area. Applicant maintains 24 terminals including 6 in each of Arkansas and Oklahoma, 3 in each of Mississippi and Missouri, 2 each in Texas and Kansas, and 1 each at Chicago and Memphis. Additional terminals will be established at Atlanta, Birmingham, El Dorado, and Texarkana, Ark. Its equipment consists of 310 tractors, 120 trucks, and 636 trailers, including 111 equipped with mechanical refrigeration. If the application is granted, 10 tractors and 20 trucks will be added to Jones' fleet.

Jones proposes to serve (1) between Atlanta and Texarkana over a specified route, serving the intermediate points of Birmingham, Greenville, and those on U.S. Highway 82 in Arkansas; between Texarkana and Sherman over a specified route, serving all intermediate points; between Texarkana and Dallas over a specified route, serving all intermediate points; and between Birmingham and Memphis serving no intermediate points. The proposals are restricted against the handling of traffic to or from Memphis and its commercial zone, on the one hand, and, on the other, points east of the Mississippi River.

Applicant would render overnight service to and from Birmingham and Atlanta, on the one hand, and, on the other, those points served in northeast Arkansas and southeast Missouri, points on U.S. Highway 70 between Memphis and Little Rock (including Little Rock), the Mississippi River Delta area, and points on U.S. Highway 82 as far west as El Dorado. The remaining territory Jones serves would receive second-morning service on LTL traffic moving to and from Atlanta and Birmingham. Volume shipments will receive next-day service up to 800 miles. LTL shipments between Birmingham and Atlanta, on the one hand, and, on the other, St. Louis, Mo., would receive second-morning service and truckload shipments would receive overnight service.

Jones proposes one schedule initially from Atlanta which would stop at Memphis for a relay of drivers and thence move to Springdale, Ark., for break bulk and delivery to local areas and transfer to units moving to the terminals of Springsfield and Joplin, Mo., Muskogee, Okla., and Wichita, Kans. In the reverse direction, shipments will move from those points at 10 a.m. and will be relayed through Memphis for delivery to Atlanta on an overnight basis. Another schedule will move between Atlanta and Memphis which will be coordinated with schedules between Memphis and Jonesboro and Little Rock, Ark., allowing for overnight service between these Arkansas points and Atlanta. A schedule is proposed between Memphis and Birmingham with a transfer providing for overnight and second-morning service from Atlanta. Another schedule would move between Atlanta and Greenville with pickups and dropoffs at Birmingham. At Greenville and Memphis, shipments would be combined with the other schedules and would be dispatched along with the present dispatching system of Jones on an overnight basis between Greenville and Dallas and Sherman and between Memphis and other major terminals. Although Jones proposes to use driver relays, it indicates that if two-man, sleeper-

cab operations prove beneficial, they will be used. Jones' schedules are based on a 40-mile per hour average running time which includes intermediate stops for rest and meals. The schedule between Atlanta and Fort Worth-Dallas would stop for combining at Greenville and proceed from Greenville to Dallas-Fort Worth the next evening, with about a 10-hour layover at Greenville on LTL traffic. It would leave Atlanta at 7 p.m., make a pickup at Birmingham, and arrive in Greenville at 6 a.m. the following morning. The schedule would leave Greenville about 10 hours later for Dallas-Fort Worth and make a dropoff at Texarkana. Traffic between Greenville and El Dorado would be handled separately from the through sechedules. Jones hopes to interline perishable products from Florida with Ryder at Atlanta, which traffic Jones cannot now interchange at Memphis because of the length of time involved in the Jones' refrigerator unit being off its line.

Each of the applicants is financially and otherwise fit and able properly to conduct the proposed services.

SUPPORTING EVIDENCE

Nine hundred and thirty-three witnesses—collectively representing shippers, receivers, 4 transportation consultants, 12 motor carriers which wish to interline, chambers of commerce, and port authorities—testified in support of the applications. The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a georgraphic basis. We have accordingly restated the supporting evidence in appendix E to this report. Those shippers which support only Roadway or Floyd & Beasley, applicants which did not file exceptions to the recommended denial of their respective applications, are neither discussed in the appendix, nor included in the statistical data below. Roadway has since acquired control of much of the authority it sought herein and can now generally serve the shippers which supported its application. The shippers which supported Floyd & Beasley are located generally in the same territory as those treated in appendix E and their evidence, although not specifically discussed herein, has

been considered. As a consequence, the evidence presented by 824 supporting witnesses is summarized in appendix E and below.

Generally, the involved traffic moves (1) between points in the Southwest, on the one hand, and, on the other, points in the Southeast, Middle Atlantic, and New England States; (2) between points in the Midwest, on the one hand, and, on the other, points in the East and Southeast; and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississipi. It consists of an exteremely wide variety of commodities (the examiners catagorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture.

As indicated above, the shippers[18] are listed geographically in appendix E according to the location of their facilities at which they receive or from which they ship the involved traffic. When a shipper has facilities in more than one State, it has been listed more than once, except when the involved movements are between its own facilities. Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest;[19] 340 shippers in the Southeast;[20] 44, collectively, in the Middle Atlantic and New England States;[21] and 42 in the Midwest.[22]

In addition to shipper evidence in support of its application, Johnson submitted an economic study prepared by the chairman of the Department of Transportation, University of Houston. The study develops the theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth. In this respect it is noted, as set forth in appendix F, that on

[18] The term "shippers," as used herein, represents the witnesses which appeared in support of the applications. It is noted that sometimes more than one witness appeared for the same shipper, that the same witness may have appeared and been counted more than once, and that some of the witnesses do not represent shippers in the strict sense of the word.

[19] Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas.

[20] Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia.

[21] Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island.

[22] Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri.

the whole the population in the States in which supporting shippers are located (except Mississippi), has increased substantially between 1960 and 1970.

Southwest.—The 84 Arkansas shippers collectively have facilities at 83 points in this State, with the greatest concentration of shippers at Fort Smith (9), El Dorado (8), Fayetteville (8), Little Rock (8), and Springdale (8).[23] Of the six shippers with facilities in Colorado, three are located at Denver, two at Colorado Springs, and one at Littleton. The 84 Louisiana-based shippers have facilities at 29 points, with most located at Baton Rouge (19), Shreveport (14), New Orleans (11), and Monroe (8).[24]

The one shipper with facilities in New Mexico states that, in addition to having stores in this State, it has a warehouse at Albuquerque, N. Mex. Of the 32 shippers with facilities in Oklahoma, 16 are located at Tulsa, 9 at Oklahoma City, 5 at Muskogee, and 1 at each of the points of Spiro, Stigler, Stillwell, Tahlequah, and Westville. Also, two shippers indicate that they have stores located in Oklahoma.[25] The 275 supporting Texas shippers collectively have facilities at 55 points in this State. One hundred and thirty-two shippers have facilities at Dallas (which includes the Dallas Chamber of Commerce), 57 at Houston, and 20 at Fort Worth.[26]

[23] With respect to the remaining Arkansas points, one shipper is located at Ashdown, three at Bentonville, one at Blytheville, one at Cabot, three at Camden, five at Conway (including one motor carrier), three at Crossett, two at Gravette, three at Hamburg, one at Hiwassee, two at Hope, one at Lincoln, one at Lowell, three at Magnolia, one at Marked Tree, one at Osceola, one at Pine Bluff, one at Rector, two at Rogers, two at Russellville, three at Searcy (including one motor carrier), one at Sheridan, six at Siloam Springs, three at Texarkana (including the chamber of commerce thereof), and one at Van Buren. Two Arkansas shippers 111.(240) and 25.(452)] indicate that they have a number of stores in this State. Considering Arkansas shipper 11.(240), it should be noted, as is described in footnote 1 of appendix E, that the number 11 indicates that this is the 11th witness, in order of appearance, which has facilities in Arkansas, and that the number in the parenthesis is the witness number used by the examiners.

[24] The number of shippers located at Shreveport and Monroe includes one motor common carrier which wishes to interline at both of these points. The remaining Louisiana shippers are located at Abbeville (1), Addis (1), Alexandria (2), Alpine City (2), Bastrop (1), Bossier City (3), Golden Meadow (1), Haynesville (1), Houma (1), Kenner (1), Lafayette (5), Lake Charles (3), including the harbor and terminal district, Lockport (1), Mansfield (1), Morgan City (1), Opelousas (1), Pineville (1), Rayne (1), Ruston (1), St. Francisville (1), Springfield (1), Supreme (1), Thibodeaux (1), West Monroe (3), and Zachary (1). Three Louisiana shippers, viz. 7.(240), 22.(452), and 83.(917) indicate that they have stores located at numerous points in Louisiana.

[25] See shippers 2.(452) and 26.(828) under the Oklahoma heading. The latter also has a warehouse at Oklahoma City, Okla.

[26] Additionally, seven shippers have facilities at Texarkana (which includes the chamber of commerce thereof); six at both San Antonio and Tyler; five at both Amarillo and Wichita Falls; four at both Arlington and Greenville; three each at Garland, Graham, and Grand Prairie; two each at Bonham, Jasper, Nacogdoches, Paris, and Sulpher Springs; and one at each of the points of Austin, Baytown, Beaumont, Breckenridge, Bryan, Clarksville, Cleburne, Corpus Christi, Denison, Electra, Everman, Ferris, Floresville, Hearne, Irving, Itasca, Jacksonville, Kamay, (footnote continued on next page)

Southeast.—Of the 84 supporting shippers located in Alabama, 46 have facilities at Birmingham;[27] 8 at Montgomery (including a motor common carrier which wishes to interline); 5 at Mobile; 4 at Gadsden; 3 at each of the points of Decatur, Tuscaloosa, and Pelham; 2 at each of the points of Bessemer, Huntsville, and Scottsboro; and 1 at each of the points of Boaz, Brent, Centre, Cullman, Florence, Jackson's Gap, Leeds, Prattville, Springville, Union Springs, Uniontown, and West Gate. The 15 supporting shippers located in Florida have facilities at Miami (9), Pensacola (6), Lakeland (1), and Orlando (1). Most of the 114 shippers with facilities in Georgia are located at Atlanta (87), with the remainder located at Columbus (7), Augusta (6), Griffin (4), and a number of other points in Georgia.[28] One shipper is located at Louisville, Ky.

In Mississippi, 54 shippers have facilities at Cleveland (1), Florence (1), Greenville (7), including the port commission and the chamber of commerce thereof, Greenwood (3), Indianola (2), Jackson (32), Laurel (1), Meridian (3), Moss Point (1), Port Gibson (1), and Vicksburg (2).[29] Twenty-five of the supporting shippers have facilities at 15 points in North Carolina. Seven are located at Charlotte, four at Statesville, three at Gastonia, two at both Cornelius and Greensboro, and one at each of the points of Asheville, Forest City, Hickory, High Point, Huntersville, Landis, Old Fort, Raleigh, Sodeyco, and Waynesville. The 25 shippers with facilities in South Carolina are located at 20 points. Three are located at Belton and Greenville (including two motor carriers, one of which, although it is located at Hartsville, S.C., wishes to interline at Greenville), and two are located at Seneca, S.C. One shipper is located at each of the remaining specified South Carolina points.[30] Twelve of the 17 supporting shippers with facilities in

(footnote 26 continued)

Longview, McGregor, McKinney, Marlin, Nocona, Palestine, Perryton, Pineland, Pittsburg, Plano, Port Arthur, Seguin, Sherman, Smith's Bluff, Taylor, Temple, Waco, Winnsboro, and Wolfe City. Some shippers have stores at numerous points in Texas, i.e., 25 (240) under the Texas heading.

[27] Included are shippers located at points in the commercial zone of Birmingham such as Irondale, Ala.

[28] Three shippers have facilities at Rome, two at each of the points of Hampton, LaGrange, Savannah, and Stone Mountain; and one at each of the points of Cedartown, Chickamauga, Clarton, Conyers, Cordele, Dalton, Hartwell, Milledgeville, Sparta, and Tucker, Ga.

[29] Shipper 52 (917) under the Mississippi heading indicates that it has stores located in this State.

[30] Aiken, Anderson, Bethune, Blacksburg, Charleston, Chester, Clearwater, Easley, East Greenwood, Georgetown, Lyman, Mauldin, Orangeburg, Rock Hill, Spartanburg, Startex, and Westminister. Also shipper 1 (13) under the South Carolina heading indicates that it receives traffic at its 29 plants located at numerous points in South Carolina. Another shipper, 18 (574), under South Carolina, indicates that it has facilities in this State.

Tennessee are located at Chattanooga, while 5 have facilities at Memphis and 1 at each of Murfreesboro and Nashville. Two of the five Virginia shippers have facilities at Richmond, Va. The remainder are located at Petersburg, Va.

Middle Atlantic and New England States.—The four supporting Connecticut shippers have facilities at six points: one shipper is located at each of the points of Jewett City, Rockville, Waterbury, West Hartford, and the shipper located at Waterbury also has facilities at Wallingford and Bridgeport. The sole supporting shipper with facilities in Delaware is located at Rockford. Three shippers have facilities at Baltimore, Md. Eight, collectively, have facilities at 12 points in Massachusetts: three are located at Fall River and one at each of the points of Ashland, Charlestown, Dodgeville, Foxboro, New Bedford, North Eastern, Springfield, Waltham, Watertown, Westboro, and Worcester. One shipper has facilities at Nashua, N.H. Nine collectively have facilities at 11 points in New Jersey: two are located at Elizabeth, and one shipper is located at each of the remaining named New Jersey points.[31] The five supporting New York shippers collectively have facilities at six points: one shipper is located at each of the points of Broklyn, New York City, Orangeburg, Pearl River, and Pleasant Valley. The New York City shipper also has facilities in Buchanan, N.Y. Of the eight supporting shippers with facilities in Pennsylvania, two are located at York and one at each of the points of Fort Washington, Marcus Hook, Mount Holly Springs, Philadelphia, Pittsburgh, and Pottsville. Additionally, a motor common carrier wishes to interline at Harrisburg, Pa. One of the four Rhode Island shippers has facilities at Warren and Kenyon; while the remaining three have facilities, respectively, at Lincoln, Pawtucket, Warren, and Woonsocket.

Midwest.—Of the 15 Kansas shippers, 10 have facilities at Kansas City, including 1 motor common carrier, and 2 are located at each of the points of Loring, Topeka, and Wichita.[32] Most of the 27 supporting shippers with facilities in Missouri are located at Kansas City (16), including 2 motor common carriers which wish to interline. Five supporting shippers have facilities at Springfield, Mo., and one shipper is located at each of the remaining named Missouri points.[33]

[31] Bound Brook, East Rutherford, Hillside, Linden, Moorestown, Morris Plains, Orange, Plainfield, Princeton, and Wharton.

[32] Shipper 2.(452) under the Kansas heading indicates that it has stores located in Kansas.

[33] Carl Junction, Marshfield, Noel, St. Louis, Stockton, and Webb City. Shipper 4.(452) under the Missouri heading indicates that it has stores located in a portion of Missouri.

The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive. The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1- to 7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown to have received between 3- and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are respresentative of the service these shippers are and have been receiving.

About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic.[34] Thus, Roadway assertedly has refused to handle shipments, including furniture, and has informed certain shippers that it does not want to handle their traffic. At Springfield and Marshfield, Mo., it has refused to handle shipments weighing less than 5,000 pounds. Ryder has informed a number of shippers located at Chattanooga that it would not provide service between this point and points in Alabama, Georgia, Mississippi, North Carolina, and South Carolina. These shippers were provided a list by Ryder indicating those points which Ryder was no longer serving. Ryder has also informed other shippers that it does not wish to handle their traffic, and it has a 3-line haul restriction on traffic moving to Mississippi. Campbell Sixty-Six refused to handle traffic

[34] Alabama, Arkansas, Georgia, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

to a number of Mississippi points during 1966, and it has refused to handle some of supporting shippers' traffic. Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers.

Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States.[35] A number of shippers at Atlanta have experienced difficulty in obtaining pickup service especially on shipments to points in Louisiana and Mississippi. The shippers collectively complain that approximately 30 of the protestants either failed to make timely pickups and shipments were delayed by 1 or more days, or they failed to make timely deliveries, forcing the receivers either to pick up the incoming shipment at the carrier's dock or wait until the carrier delivered the shipment 1 or more days late. Most of shippers' pickup and delivery complaints are registered against Ryder, Roadway, and Campbell.

Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing. A number of the shippers indicates that normally the interchange of LTL traffic involves, at a minimum, 24 hours. In addition to the difficulties inherent in interline service, shippers complain that tracing is unsatisfactory when multiple lines are involved; that shipments are split in transit and consequently portions of the shipment are lost or delayed; and that they find it difficult to obtain prompt claim service when two or more carriers are involved. Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service. The shippers with

[35] Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

movements to points in the Southwest and Midwest generally receive complaints from customers located in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. Most of the complaints are voiced by customers in Louisiana, Mississippi, and Texas. The shippers in the Southwest receive complaints from customers located in the Southeast, Middle Atlantic, and New England States, with most of the complaints coming from customers in Florida, Georgia, and Mississippi.

The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts.[36] Also, in some cases shippers have suffered losses under contract penalty clauses for failure to live up to commitments because of transportation problems. Many indicate that they or their customers are unable to maintain minimum inventories or meet production schedules. Generally, many shippers submit that because of the inadequacy of existing transportation services, they are not only unable to expand but they find it difficult properly to serve their existing customers. In seeking a solution, some have established distribution warehouses or have reverted to private motor carriage.

While the examiners found that a substantial number of the supporting shippers had not thoroughly investigated existing services, a review of the record indicates that many have made such an investigation and have in fact used the available single-line and a number of feasible joint-line services. While the shippers may not have utilized every possible combination of joint-line service available, they have collectively tried most, if not all, of the available combinations and found them inadequate. Admittedly, some of the shippers failed to specify routings. These failures, however, must be viewed in the light of the assertions of a number of the shippers that even when they routed their traffic they were unable to obtain adequate service, and this function was relegated solely in an attempt to obtain better service.

PROTESTANTS

The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary.[37] For the most part, protestants are regular-route motor common carriers of general commodities which collectively, either

[36] Approximately 80 shippers in a total of 14 Southeast, Southwest, and Midwest States complained about lost business and customers.

[37] None of the protestants opposed only the application of Floyd & Beasley.

directly or through interchange, are authorized to serve the points here sought to be served by applicants.

As described in appendix G, 14 of the remaining 42 protestants introduced transit time studies of traffic handled between the involved points.[38] The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier[39] demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percnt (from Fort Smith to Newark, N.J.) to a high of 73.3 percrnt (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.

DISCUSSION AND CONCLUSIONS

In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time

[38] The examiners' treatment of the various protestants' transit time (elapsed time) studies is understandably not all-inclusive. It is sufficient for our purposes, however, and we see no need to expand on it inasmuch as any expansion would not affect our discussion of the studies themselves.

[39] This study was introduced by Consolidated.

between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

As indicated, the four southwestern applicants (Herrin,[40] Red Ball, Strickland, and Jones) generally seek to extend their authority to southeastern gateways such as Birmingham and Atlanta, and the four remaining southern applicants (Deaton, Baggett, Bowman, and Johnson) propose to expand their operations into the Southwest, with Bowman also seeking to serve Missouri and Kansas points. As a consequence, the applications of these two groups of carriers differ

[40]The validity of characterizing Herrin (of Houston) as a southwestern carrier might be questioned in light of the fact that McLean, of Winston-Salem, N.C., has been substituted as applicant in No. MC-1124 (Sub-No. 206). It is noted, however, that (as will be discussed hereinafter) although Herrin seeks authority to serve southeastern points, with only some exceptions (20 shippers located at Atlanta, 4 at Columbus, 2 at Mobile, and 3 at Memphis) shippers supporting this application are located in the Southwest, or more specifically, 29 are located in Louisiana and 40 in Texas. More important is the fact that even though Herrin holds authority to serve southeastern points, by this application it is seeking to extend its operations (except with respect to Memphis) between points in the Southwest it can presently serve and points in the Southeast which it either cannot serve or to which it can render only limited service. Thus, the status of this carrier as a southwestern applicant, insofar as this proceeding is concerned, has not been altered by the substitution of McLean as applicant.

not only in their specifics (i.e., the points or territories that would be served) but also as to those members of the public to whom their service would primarily be proffered.

In *Mayfield Sons Trucking Co. Extension—Kentucky*, 108 M.C.C. 651, at page 657 (1969), it was stated that:

> the Commission favors the existence of sufficient carrier capacity to encourage competition and provide incentives for real innovation and improvement to the public; however, it will not approve the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers. *M. R. & R. Trucking Co., Ext.—Birmingham*, 105 M.C.C. 69, at page 80.

It has also been pointed out, in *Motor Freight Corp. Ext.—Pottawattamie County, Iowa*, 106 M.C.C. 654, 657 (1968), that: "Multiple-application proceedings require care not only to avoid the prolifferation of operating authorities not needed by the shipping public, but also *** [to select those] carriers with the ability to perform the proposed service." We must decide which of the applicants here before us should receive authority inasmuch as (a) there are motor common carriers already operating generally between the territories applicants propose to serve, (b) the present applications may broadly be characterized as those of either southwestern carriers proposing to expand their operations to points in the Southeast or southern carriers seeking, for the most part, to extend their operations to points in the Southwest, (c) there is not, in our opinion, sufficient traffic to sustain all of the additional motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest. Cf. *Pan-American Bus Lines Operation*, 1 M.C.C. 190, at page 203 (1936).

Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation

services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, and others that will be discussed in connection with our grants of authority to each individual carrier, we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson.

The southwestern applicants.—Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar. With respect to this latter category of applicants, it is our opinion that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Regrigerated Xpress, Inc., Ext.—Denison, Iowa,* 96 M.C.C. 233, 237 (1964), are as follow: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. Cf. also *H. C. Gabler, Inc., Ext.—Cement from Md. and Pa. Counties,* 86 M.C.C. 447, 469-470 (1961), and cases cited therein. Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones; that the number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest; that with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones; that Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a)

terminal. Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport. Applicant operates approximately 500 tractors and 1,000 trailers, including 44 temperature-controlled vehicles, and it will add 50 tractors and 100 trailers to its fleet if its application is granted.

Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route. The stated purpose of the proposal is to permit service of an "over-head" nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes. No service is proposed between points on the southern route and points on the northern route. Applicant indicates that it will offer daily, scheduled, LTL service between Dallas and Savannah, by tacking its above-described irregular-route authority with its regular-route authority at Graniteville. Johnson also seeks authority to operate over two alternate routes. It is submitted that one (which is between Shreveport, a point on the northern route, and Baton Rouge, a point on the southern route) would enable applicant to move its empty equipment from the northern route to the southern route to pick up traffic from the Pascagola, Mobile, and Pensacola area. The other (which is between Montgomery and the junction of U.S. Highways 11 and 80 near Cuba, Ala.) would enable applicant, on its northern route, to move eastbound traffic from Dallas through Montomery and Opelika, Ala., making pickups at these two points, and then proceeding to Atlanta.

Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by applicant mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area, from and to points in North Carolina, Wallace, S.C., and points north and east thereof, will break bulk at Charlotte, and move by

two-man teams[1] on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points. Traffic moving to and from points on the southern route and applicant's present terminals of Gulfport, Pascagoula, Mobile, and Pensacola will be handled by schedules originating and terminating in Mobile and Pensacola. Two-man teams will handle the schedules originating and terminating at Mobile, which traffic will move between Pascagoula and Gulfport and the proposed terminals at Beaumont and Houston. A single driver will handle the schedule originating and terminating at Pensacola on the traffic moving to and from Mobile, Pascagoula, and Gulfport, and to and from Baton Rouge. The Mobile schedule will be dispatched through Pascagoula and Gulfport to pick up en route and deliver at Beaumont en route to Houston. Eastbound, the Houston schedule will be dispatched through Beaumont to pick up en route and will stop en route to Mobile at Gulfport and Pascagoula to deliver. The Pensacola schedule will be dispatched through Mobile, Pascagoula, and Gulfport to pick up en route and then proceed to Baton Rouge where it will terminate. Applicant proposes 17 westbound schedules (each schedule representing 1 vehicle) from Charlotte and 7 westbound from Atlanta daily, 5 days a week (excluding holidays). Eastbound, nine schedules would move daily to Charlotte and four would move to Atlanta. One westbound vehicle would be dispatched from Mobile and one from Pensacola. Eastbound, one vehicle would be dispatched from Houston to Mobile and one from Baton Rouge to Pensacola. Additionally, applicant proposes dispatched movements, which are not set up as daily schedules, to handle overflow freight from Charlotte and Atlanta to points on the proposed northern and southern routes. Thus, not including the two above-described dispatched movements from Charlotte and the two from Atlanta, applicant proposes 41 schedules daily, namely: 17 from Charlotte, 7 from Atlanta, 1 from

[1] On March 13, 1966, the change in Johnson's operations to include two-man operations became effective. Applicant introduced a summary of a survey of two-man operations between Charlotte, on the one hand, and, on the other, Pensacola, Mobile, Pascagoula, Gulfport, and New Orleans. Between January 2 and January 26, 1966, applicant's two-man teams made 253 trips between the above-described points in a total of 4,491 hours over 176,115 miles for an overall average of 39.21 miles per hour.

Pensacola, 1 from Mobile, 9 eastbound to Charlotte, 4 eastbound to Atlanta, 1 eastbound out of Houston to Mobile, and 1 eastbound out of Baton Rouge to Pensacola.

Originating and delivering traffic only between Monday and Friday (excluding holidays), applicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve. The 1-day service would generally be rendered only on either the "Express" schedules over the southern route or between Baton Rouge and applicant's southernmost terminals (except New Orleans). To illustrate Johnson's proposal, a shipment moving from Medford (Boston), Mass., over Charlotte to Houston would depart from Medford at 9 p.m. on a Monday and arrive at Charlotte at 9:30 p.m. of the following day. At 33.3 miles per hour, the 816 miles between these terminals would be traversed in 24.5 hours. Four hours would be allowed for break-bulk operations at Charlotte and departure from Charlotte would occur at 1:30 a.m. Wednesday. The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour. Thus, the movement would arrive in Houston at 4:30 a.m. on Thursday.

Jones holds regular- and irregular-route motor common carrier authority to transport general commodities, (with the usual exceptions) and specified commodities, including frozen and prepared foodstuffs. Its regular routes extend generally between points within a territory bounded, on the north, by Kansas City and Chicago; on the south by Dallas-Fort Worth and Greenville and Winona, Miss.; on the west by Oklahoma City, Okla., and Wichita, Kans.; and on the east by Memphis. Applicant presently traverses a portion of the proposed routes, viz. generally between Winona and Texarkana, from Winona over U.S. Highway 82 to Texarkana; between Texarkana and Dallas, from Texarkana over U.S. Highway 67 to Dallas; and between Texarkana and Sherman, over U.S. Highway 82. Jones' irregular-route authority generally authorizes the transportation of general commodities within portions of this same area. Applicant maintains 24 terminals including 6 in each of Arkansas and Oklahoma, 3 in each of Mississippi and Missouri, 2 each in Texas and Kansas, and 1 each at Chicago and Memphis. Additional terminals will be established at Atlanta, Birmingham, El Dorado, and Texarkana, Ark. Its equipment consists of 310 tractors, 120 trucks, and 636 trailers, including 111 equipped with mechanical refrigeration. If the application is granted, 10 tractors and 20 trucks will be added to Jones' fleet.

Jones proposes to serve (1) between Atlanta and Texarkana over a specified route, serving the intermediate points of Birmingham, Greenville, and those on U.S. Highway 82 in Arkansas; between Texarkana and Sherman over a specified route, serving all intermediate points; between Texarkana and Dallas over a specified route, serving all intermediate points; and between Birmingham and Memphis serving no intermediate points. The proposals are restricted against the handling of traffic to or from Memphis and its commercial zone, on the one hand, and, on the other, points east of the Mississippi River.

Applicant would render overnight service to and from Birmingham and Atlanta, on the one hand, and, on the other, those points served in northeast Arkansas and southeast Missouri, points on U.S. Highway 70 between Memphis and Little Rock (including Little Rock), the Mississippi River Delta area, and points on U.S. Highway 82 as far west as El Dorado. The remaining territory Jones serves would receive second-morning service on LTL traffic moving to and from Atlanta and Birmingham. Volume shipments will receive next-day service up to 800 miles. LTL shipments between Birmingham and Atlanta, on the one hand, and, on the other, St. Louis, Mo., would receive second-morning service and truckload shipments would receive overnight service.

Jones proposes one schedule initially from Atlanta which would stop at Memphis for a relay of drivers and thence move to Springdale, Ark., for break bulk and delivery to local areas and transfer to units moving to the terminals of Springsfield and Joplin, Mo., Muskogee, Okla., and Wichita, Kans. In the reverse direction, shipments will move from those points at 10 a.m. and will be relayed through Memphis for delivery to Atlanta on an overnight basis. Another schedule will move between Atlanta and Memphis which will be coordinated with schedules between Memphis and Jonesboro and Little Rock, Ark., allowing for overnight service between these Arkansas points and Atlanta. A schedule is proposed between Memphis and Birmingham with a transfer providing for overnight and second-morning service from Atlanta. Another schedule would move between Atlanta and Greenville with pickups and dropoffs at Birmingham. At Greenville and Memphis, shipments would be combined with the other schedules and would be dispatched along with the present dispatching system of Jones on an overnight basis between Greenville and Dallas and Sherman and between Memphis and other major terminals. Although Jones proposes to use driver relays, it indicates that if two-man, sleeper-

cab operations prove beneficial, they will be used. Jones' schedules are based on a 40-mile per hour average running time which includes intermediate stops for rest and meals. The schedule between Atlanta and Fort Worth-Dallas would stop for combining at Greenville and proceed from Greenville to Dallas-Fort Worth the next evening, with about a 10-hour layover at Greenville on LTL traffic. It would leave Atlanta at 7 p.m., make a pickup at Birmingham, and arrive in Greenville at 6 a.m. the following morning. The schedule would leave Greenville about 10 hours later for Dallas-Fort Worth and make a dropoff at Texarkana. Traffic between Greenville and El Dorado would be handled separately from the through sechedules. Jones hopes to interline perishable products from Florida with Ryder at Atlanta, which traffic Jones cannot now interchange at Memphis because of the length of time involved in the Jones' refrigerator unit being off its line.

Each of the applicants is financially and otherwise fit and able properly to conduct the proposed services.

SUPPORTING EVIDENCE

Nine hundred and thirty-three witnesses—collectively representing shippers, receivers, 4 transportation consultants, 12 motor carriers which wish to interline, chambers of commerce, and port authorities—testified in support of the applications. The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a georgraphic basis. We have accordingly restated the supporting evidence in appendix E to this report. Those shippers which support only Roadway or Floyd & Beasley, applicants which did not file exceptions to the recommended denial of their respective applications, are neither discussed in the appendix, nor included in the statistical data below. Roadway has since acquired control of much of the authority it sought herein and can now generally serve the shippers which supported its application. The shippers which supported Floyd & Beasley are located generally in the same territory as those treated in appendix E and their evidence, although not specifically discussed herein, has

been considered. As a consequence, the evidence presented by 824 supporting witnesses is summarized in appendix E and below.

Generally, the involved traffic moves (1) between points in the Southwest, on the one hand, and, on the other, points in the Southeast, Middle Atlantic, and New England States; (2) between points in the Midwest, on the one hand, and, on the other, points in the East and Southeast; and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississipi. It consists of an exteremely wide variety of commodities (the examiners catagorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture.

As indicated above, the shippers[18] are listed geographically in appendix E according to the location of their facilities at which they receive or from which they ship the involved traffic. When a shipper has facilities in more than one State, it has been listed more than once, except when the involved movements are between its own facilities. Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest;[19] 340 shippers in the Southeast,[20] 44, collectively, in the Middle Atlantic and New England States;[21] and 42 in the Midwest.[22]

In addition to shipper evidence in support of its application, Johnson submitted an economic study prepared by the chairman of the Department of Transportation, University of Houston. The study develops the theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth. In this respect it is noted, as set forth in appendix F, that on

[18] The term "shippers," as used herein, represents the witnesses which appeared in support of the applications. It is noted that sometimes more than one witness appeared for the same shipper, that the same witness may have appeared and been counted more than once, and that some of the witnesses do not represent shippers in the strict sense of the word.

[19] Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas.

[20] Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia.

[21] Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island.

[22] Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri.

the whole the population in the States in which supporting shippers are located (except Mississippi), has increased substantially between 1960 and 1970.

Southwest.—The 84 Arkansas shippers collectively have facilities at 83 points in this State, with the greatest concentration of shippers at Fort Smith (9), El Dorado (8), Fayetteville (8), Little Rock (8), and Springdale (8).[3] Of the six shippers with facilities in Colorado, three are located at Denver, two at Colorado Springs, and one at Littleton. The 84 Louisiana-based shippers have facilities at 29 points, with most located at Baton Rouge (19), Shreveport (14), New Orleans (11), and Monroe (8).[4]

The one shipper with facilities in New Mexico states that, in addition to having stores in this State, it has a warehouse at Albuquerque, N. Mex. Of the 32 shippers with facilities in Oklahoma, 16 are located at Tulsa, 9 at Oklahoma City, 5 at Muskogee, and 1 at each of the points of Spiro, Stigler, Stillwell, Tahlequah, and Westville. Also, two shippers indicate that they have stores located in Oklahoma.[5] The 275 supporting Texas shippers collectively have facilities at 55 points in this State. One hundred and thirty-two shippers have facilities at Dallas (which includes the Dallas Chamber of Commerce), 57 at Houston, and 20 at Fort Worth.[6]

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[3] With respect to the remaining Arkansas points, one shipper is located at Ashdown, three at Bentonville, one at Blytheville, one at Cabot, three at Camden, five at Conway (including one motor carrier), three at Crossett, two at Gravette, three at Hamburg, one at Hiwassee, two at Hope, one at Lincoln, one at Lowell, three at Magnolia, one at Marked Tree, one at Osceola, one at Pine Bluff, one at Rector, two at Rogers, two at Russellville, three at Searcy (including one motor carrier), one at Sheridan, six at Siloam Springs, three at Texarkana (including the chamber of commerce thereof), and one at Van Buren. Two Arkansas shippers [11 (240) and 25 (452)] indicate that they have a number of stores in this State. Considering Arkansas shipper 11 (240), it should be noted, as is described in footnote 2 of appendix E, that the number 11 indicates that this is the 11th witness, in order of appearance, which has facilities in Arkansas, and that the number in the parenthesis is the witness number used by the examiners.

[4] The number of shippers located at Shreveport and Monroe includes one motor common carrier which wishes to interline at both of these points. The remaining Louisiana shippers are located at Abbeville (1), Addis (1), Alexandria (2), Alpine City (2), Bastrop (1), Bossier City (3), Golden Meadow (1), Haynesville (1), Houma (1), Kenner (1), Lafayette (5), Lake Charles (3), including the harbor and terminal district, Lockport (1), Mansfield (1), Morgan City (1), Opelousas (1), Pineville (1), Rayne (1), Ruston (1), St. Francisville (1), Springfield (1), Supreme (1), Thibodeaux (1), West Monroe (3), and Zachary (1). Three Louisiana shippers, viz., 7 (240), 22 (452), and 83 (917) indicate that they have stores located at numerous points in Louisiana.

[5] See shippers 2 (452) and 26 (828) under the Oklahoma heading. The latter also has a warehouse at Oklahoma City, Okla.

[6] Additionally, seven shippers have facilities at Texarkana (which includes the chamber of commerce thereof), six at both San Antonio and Tyler, five at both Amarillo and Wichita Falls, four at both Arlington and Greenville, three each at Garland, Graham, and Grand Prairie, two each at Bonham, Jasper, Nacogdoches, Paris, and Sulpher Springs, and one at each of the points of Austin, Baytown, Beaumont, Breckenridge, Bryan, Clarksville, Cleburne, Corpus Christi, Denison, Electra, Everman, Ferris, Floresville, Hearne, Irving, Itasca, Jacksonville, Kamay, (footnote continued on next page)

Southeast.—Of the 84 supporting shippers located in Alabama, 46 have facilities at Birmingham;[27] 8 at Montgomery (including a motor common carrier which wishes to interline); 5 at Mobile; 4 at Gadsden; 3 at each of the points of Decatur, Tuscaloosa, and Pelham; 2 at each of the points of Bessemer, Huntsville, and Scottsboro; and 1 at each of the points of Boaz, Brent, Centre, Cullman, Florence, Jackson's Gap, Leeds, Prattville, Springville, Union Springs, Uniontown, and West Gate. The 15 supporting shippers located in Florida have facilities at Miami (9), Pensacola (6), Lakeland (1), and Orlando (1). Most of the 114 shippers with facilities in Georgia are located at Atlanta (87), with the remainder located at Columbus (7), Augusta (6), Griffin (4), and a number of other points in Georgia.[28] One shipper is located at Louisville, Ky.

In Mississippi, 54 shippers have facilities at Cleveland (1), Florence (1), Greenville (7), including the port commission and the chamber of commerce thereof, Greenwood (3), Indianola (2), Jackson (32), Laurel (1), Meridian (3), Moss Point (1), Port Gibson (1), and Vicksburg (2).[29] Twenty-five of the supporting shippers have facilities at 15 points in North Carolina. Seven are located at Charlotte, four at Statesville, three at Gastonia, two at both Cornelius and Greensboro, and one at each of the points of Asheville, Forest City, Hickory, High Point, Huntersville, Landis, Old Fort, Raleigh, Sodeyco, and Waynesville. The 25 shippers with facilities in South Carolina are located at 20 points. Three are located at Belton and Greenville (including two motor carriers, one of which, although it is located at Hartsville, S.C., wishes to interline at Greenville), and two are located at Seneca, S.C. One shipper is located at each of the remaining specified South Carolina points.[30] Twelve of the 17 supporting shippers with facilities in

(footnote 26 continued)

Longview, McGregor, McKinney, Marlin, Nocona, Palestine, Perryton, Pineland, Pittsburg, Plano, Port Arthur, Seguin, Sherman, Smith's Bluff, Taylor, Temple, Waco, Winnsboro, and Wolfe City. Some shippers have stores at numerous points in Texas, i.e., 25.(240) under the Texas heading.

[27] Included are shippers located at points in the commercial zone of Birmingham such as Irondale, Ala.

[28] Three shippers have facilities at Rome, two at each of the points of Hampton, LaGrange, Savannah, and Stone Mountain, and one at each of the points of Cedartown, Chickamauga, Claxton, Conyers, Cordele, Dalton, Hartwell, Milledgeville, Sparta, and Tucker, Ga.

[29] Shipper 52.(917) under the Mississippi heading indicates that it has stores located in this State.

[30] Aiken, Anderson, Bethune, Blacksburg, Charleston, Chester, Clearwater, Easley, East Greenwood, Georgetown, Lyman, Mauldin, Orangeburg, Rock Hill, Spartanburg, Startex, and Westminister. Also shipper 1.(13) under the South Carolina heading indicates that it receives traffic at its 29 plants located at numerous points in South Carolina. Another shipper, 18.(574), under South Carolina, indicates that it has facilities in this State.

Tennessee are located at Chattanooga, while 5 have facilities at Memphis and 1 at each of Murfreesboro and Nashville. Two of the five Virginia shippers have facilities at Richmond, Va. The remainder are located at Petersburg, Va.

Middle Atlantic and New England States.—The four supporting Connecticut shippers have facilities at six points: one shipper is located at each of the points of Jewett City, Rockville, Waterbury, West Hartford, and the shipper located at Waterbury also has facilities at Wallingford and Bridgeport. The sole supporting shipper with facilities in Delaware is located at Rockford. Three shippers have facilities at Baltimore, Md. Eight, collectively, have facilities at 12 points in Massachusetts: three are located at Fall River and one at each of the points of Ashland, Charlestown, Dodgeville, Foxboro, New Bedford, North Eastern, Springfield, Waltham, Watertown, Westboro, and Worcester. One shipper has facilities at Nashua, N.H. Nine collectively have facilities at 11 points in New Jersey: two are located at Elizabeth, and one shipper is located at each of the remaining named New Jersey points.[31] The five supporting New York shippers collectively have facilities at six points: one shipper is located at each of the points of Broklyn, New York City, Orangeburg, Pearl River, and Pleasant Valley. The New York City shipper also has facilities in Buchanan, N.Y. Of the eight supporting shippers with facilities in Pennsylvania, two are located at York and one at each of the points of Fort Washington, Marcus Hook, Mount Holly Springs, Philadelphia, Pittsburgh, and Pottsville. Additionally, a motor common carrier wishes to interline at Harrisburg, Pa. One of the four Rhode Island shippers has facilities at Warren and Kenyon; while the remaining three have facilities, respectively, at Lincoln, Pawtucket, Warren, and Woonsocket.

Midwest.—Of the 15 Kansas shippers, 10 have facilities at Kansas City, including 1 motor common carrier, and 2 are located at each of the points of Loring, Topeka, and Wichita.[32] Most of the 27 supporting shippers with facilities in Missouri are located at Kansas City (16), including 2 motor common carriers which wish to interline. Five supporting shippers have facilities at Springfield, Mo., and one shipper is located at each of the remaining named Missouri points.[33]

[31] Bound Brook, East Rutherford, Hillside, Linden, Moorestown, Morris Plains, Orange, Plainfield, Princeton, and Wharton.

[32] Shipper 2.(452) under the Kansas heading indicates that it has stores located in Kansas.

[33] Carl Junction, Marshfield, Noel, St. Louis, Stockton, and Webb City. Shipper 4.(452) under the Missouri heading indicates that it has stores located in a portion of Missouri.

movements to points in the Southwest and Midwest generally receive complaints from customers located in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. Most of the complaints are voiced by customers in Louisiana, Mississippi, and Texas. The shippers in the Southwest receive complaints from customers located in the Southeast, Middle Atlantic, and New England States, with most of the complaints coming from customers in Florida, Georgia, and Mississippi.

The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts.[36] Also, in some cases shippers have suffered losses under contract penalty clauses for failure to live up to commitments because of transportation problems. Many indicate that they or their customers are unable to maintain minimum inventories or meet production schedules. Generally, many shippers submit that because of the inadequcy of existing transportation services, they are not only unable to expand but they find it difficult properly to serve their existing customers. In seeking a solution, some have established distribution warehouses or have reverted to private motor carriage.

While the examiners found that a substantial number of the supporting shippers had not thoroughly investigated existing services, a review of the record indicates that many have made such an investigation and have in fact used the available single-line and a number of feasible joint-line services. While the shippers may not have utilized every possible combination of joint-line service available, they have collectively tried most, if not all, of the available combinations and found them inadequate. Admittedly, some of the shippers failed to specify routings. These failures, however, must be viewed in the light of the assertions of a number of the shippers that even when they routed their traffic they were unable to obtain adequate service, and this function was relegated solely in an attempt to obtain better service.

PROTESTANTS

The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary.[37] For the most part, protestants are regular-route motor common carriers of general commodities which collectively, either

[36] Approximately 80 shippers in a total of 14 Southeast, Southwest, and Midwest States complained about lost business and customers.

[37] None of the protestants opposed only the application of Floyd & Beasley.

directly or through interchange, are authorized to serve the points here sought to be served by applicants.

As described in appendix G, 14 of the remaining 42 protestants introduced transit time studies of traffic handled between the involved points.[38] The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier[39] demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percnt (from Fort Smith to Newark, N.J.) to a high of 73.3 percrnt (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.

DISCUSSION AND CONCLUSIONS

In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time

[38] The examiners' treatment of the various protestants' transit time (elapsed time) studies is understandably not all-inclusive. It is sufficient for our purposes, however, and we see no need to expand on it inasmuch as any expansion would not affect our discussion of the studies themselves.

[39] This study was introduced by Consolidated.

between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

As indicated, the four southwestern applicants (Herrin,[40] Red Ball, Strickland, and Jones) generally seek to extend their authority to southeastern gateways such as Birmingham and Atlanta, and the four remaining southern applicants (Deaton, Baggett, Bowman, and Johnson) propose to expand their operations into the Southwest, with Bowman also seeking to serve Missouri and Kansas points. As a consequence, the applications of these two groups of carriers differ

[40] The validity of characterizing Herrin (of Houston) as a southwestern carrier might be questioned in light of the fact that McLean, of Winston-Salem, N.C., has been substituted as applicant in No. MC-1124 (Sub-No. 206). It is noted, however, that (as will be discussed hereinafter) although Herrin seeks authority to serve southeastern points, with only some exceptions (20 shippers located at Atlanta, 4 at Columbus, 2 at Mobile, and 3 at Memphis) shippers supporting this application are located in the Southwest, or more specifically, 29 are located in Louisiana and 40 in Texas. More important is the fact that even though Herrin holds authority to serve southeastern points, by this application it is seeking to extend its operations (except with respect to Memphis) between points in the Southwest it can presently serve and points in the Southeast which it either cannot serve or to which it can render only limited service. Thus, the status of this carrier as a southwestern applicant, insofar as this proceeding is concerned, has not been altered by the substitution of McLean as applicant.

not only in their specifics (i.e., the points or territories that would be served) but also as to those members of the public to whom their service would primarily be proffered.

In *Mayfield Sons Trucking Co. Extension—Kentucky*, 108 M.C.C. 651, at page 657 (1969), it was stated that:

> the Commission favors the existence of sufficient carrier capacity to encourage competition and provide incentives for real innovation and improvement to the public; however, it will not approve the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers. *M. R. & R. Trucking Co., Ext.—Birmingham*, 105 M.C.C. 69, at page 80.

It has also been pointed out, in *Motor Freight Corp. Ext.—Pottawattamie County, Iowa*, 106 M.C.C. 654, 657 (1968), that: "Multiple-application proceedings require care not only to avoid the prolifferation of operating authorities not needed by the shipping public, but also *** [to select those] carriers with the ability to perform the proposed service." We must decide which of the applicants here before us should receive authority inasmuch as (a) there are motor common carriers already operating generally between the territories applicants propose to serve, (b) the present applications may broadly be characterized as those of either southwestern carriers proposing to expand their operations to points in the Southeast or southern carriers seeking, for the most part, to extend their operations to points in the Southwest, (c) there is not, in our opinion, sufficient traffic to sustain all of the additional motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest. Cf. *Pan-American Bus Lines Operation*, 1 M.C.C. 190, at page 203 (1936).

Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation

services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, and others that will be discussed in connection with our grants of authority to each individual carrier, we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson.

The southwestern applicants.—Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar. With respect to this latter category of applicants, it is our opinion that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Regrigerated Xpress, Inc., Ext.—Denison, Iowa,* 96 M.C.C. 233, 237 (1964), are as follow: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. Cf. also *H. C. Gabler, Inc., Ext.—Cement from Md. and Pa. Counties,* 86 M.C.C. 447, 469-470 (1961), and cases cited therein. Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones; that the number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest; that with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones; that Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a)

Herrin proposes 6 additional southeastern terminals, the reestablishment of a terminal at Little Rock, and would add 41 tractors, 80 trailers, and 67 trucks to its fleet, (b) Strickland proposes to establish 4 additional southeastern terminals, and (c) Jones proposes to establish terminals at 2 southeastern points (Atlanta and Birmingham) and at 2 southwestern points (El Dorado and Texarkana); that Red Ball presented 130 supporting witnesses and an additional 23 witnesses specifically supported its application, whereas (a) Herrin presented 87 witnesses and an additional 11 supported its application, (b) Strickland presented 102 shipper witnesses, and an additional 24 supported its application, and (c) Jones presented 90 witnesses and an additional 117 supported its application; and that Red Ball filed its application on May 16, 1965, Herrin on June 18, 1965, Strickland on June 16, 1965, and Jones on June 14, 1965. Clearly, of the southwestern applicants, Red Ball has made the superior showing with respect to each of the above-described criteria, and, therefore, it is selected to receive the authority for which a public need has been found in this report. Moreover, none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the extensive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other, the territory Red Ball now serves. Cf. *Herrin Transp. Co. Extension—Georgia*, 95 M.C.C. 700, 715 (1964).

Against these factors, Herrin submits that it is the logical choice because (a) it now has a service and alternate route into Atlanta, (b) it does not seek to expand its operations into any new point inasmuch as it now conducts operations through or to, in the case of Atlanta and Pensacola, all the points which it here seeks to serve, and (c) Red Ball is not now a competitive factor in Georgia nor does it conduct operations even for operating convenience only into Birmingham and Atlanta. Herrin further points out that Atlanta and Birmingham are large distribution centers and that the gulf coast region in its territory west of the Mississippi River is a logical distribution area. This latter statement signifies the import of its application. Albeit this applicant asks to have certain restrictions on its existing authority removed with respect to Pensacola and Atlanta, and seeks to serve (excluding consideration of Atlanta and Birmingham) Mobile, Montgomery, Columbus, and Jackson, it produced evidence (excluding shippers and receivers located in the Southwest) of only four shippers located at Columbus, two at Mobile (Red Ball now serves between Mobile and Jackson and points in the Southwest), and three at Memphis. Its

application, like those of the other southwestern applicants, was filed primarily for authority to serve southwestern shippers and receivers on traffic moving between the Southwest, on the one hand, and, on the other, Birmingham and Atlanta. Clearly, Red Ball is in a better position than Herrin to render this service. To the extent that Herrin's proposal differs from Red Ball's, the former has not shown that the present or future public convenience and necessity require that these portions of its application be granted.

The examiners found that from a commodity standpoint, the only need shown for additional service relates to LTL shipments of commodities requiring refrigeration and not generally to the transportation of commodities requiring protective service. It appears that 4 of the 19 shippers whose evidence has been summarized by Jones require protection from freezing not heat, 3 require truckload and not LTL service, and 6 ship candy and would require refrigerated service only on a seasonal basis.

Although there may thus be some limited need for LTL refrigerated service, such service was proposed by Jones only in conjunction with its basic proposal to render regular-route general-commodity service. It has not been shown that the present or future public convenience and necessity require Jones' proposed regular-route services. By the same token, Jones has not shown a need for the regular-route transportation of specified commodities,[1] and any grant of authority made herein would have to be irregular-route in nature. The examiners found, however, that any need was for LTL refrigerated service which could not rationally be authorized because, as pointed out in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1, at page 48 (1967), "[r]estrictions limiting service to the handling of less-than-truckload shipments are indefinite and impractical, ***would be difficult to enforce, and ***will not be imposed by this Commission." We conclude that Jones' application also should be denied in its entirety.

The southern applicants.—Of the four remaining southern applicants, we are of the opinion that Bowman has pursuasively demonstrated a need for its services between specified points in Mississippi, Kansas, Missouri, Arkansas, Louisiana, and Texas, on the one hand, and, on the other, those points in the Southeast and East that it presently serves. This showing is particularly strong with respect to the first three States named.

Approximately 135 witnesses in 13 States support that portion of Bowman's application seeking authority to serve the 10 specified

[1] As pointed out in *Motor Common Carriers of Property—Routes and Service*, 88 M.C.C. 415, 430 (1961), regular-route authority has sometimes been granted to motor common carriers of only a few commodities, but in recent years such a practice has been uniformly avoided.

Mississippi points. Over 100 of these have experienced difficulties with inadequate, inconsistent, and excessive transit times. The witnesses' transit time studies show that between 3- and 4-day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points, with transit times ranging between 1 and 7 days. From other points in the territory Bowman presently serves, transit times to Mississippi range from 3 to 21 days. Approximately 25 supporting witnesses have complained of either refusals by authorized carriers to handle their traffic, and of carrier embargoes or restrictions; and about 50 have experienced pickup and delivery problems. A number of the witnesses further complain of loss, damage, difficulties with interline service, lost business and accounts, and customer complaints. Collectively, Deaton, Dixie, Campbell, Roadway, and Ryder are cited for refusing to handle a number of the supporting shippers' traffic to Mississippi from points in the Southeast. At least one of the shippers indicated that it would be forced to open a warehouse in Mississippi unless the transit time can be improved. Another shipper represented that it would be forced to switch its shipping point on traffic to Mississippi from the Southeast to the Southwest. Other witnesses located at such points in Mississippi as Jackson and Greenville have discontinued shipping from Atlanta because of the problems they have experienced.

As pointed out by Bowman, two protestants to its application (Campbell and Herrin) withdrew their opposition, and of the remaining protestants to the Mississippi portion of its application, Dixie serves only 4 of the 10 Mississippi points here sought to be served by Bowman and maintains terminals at only 2 of these points.[4] Gordons does not actively solicit any traffic between Atlanta and Birmingham, on the one hand, and, on the other, any point in Mississippi south of U.S. Highway 82, which would include, as here pertinent, Meridian, Jackson, Vicksburg, Laurel, Hattiesburg, Moss Point, and Pascagoula (for 7 of the 10 points Bowman seeks to serve). Shippers complain that Ryder is not rendering adequate service to Mississippi, and that it has refused to handle certain traffic to points in this State. Deaton holds authority to render single-line service to some of the involved Mississippi points, but it assertedly interlines this traffic. Since the hearings in the instant proceedings, Roadway, Braswell, and GFA have been authorized to serve points in Mississippi. While the single-

[4]The fall 1971 edition of the American Motor Carrier Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points, Jackson.

line service which Roadway now holds authority to provide will be duplicated to or from a number of the involved Mississippi points, the coverage of its operating rights in southern Alabama and Georgia is limited and it does not hold authority to render regular-route service at points in Florida. Braswell's single-line operations to or from Vicksburg, Jackson, and Meridian extend only as far east as Atlanta, and its authority in Alabama is limited to only the major points of Birmingham and Montgomery. GFA now holds authority to serve Jackson, Hattiesburg, Laurel, and Meridian, but its single-line operations in the Southeast embrace only a limited territory.

Approximately 80 witnesses support the Kansas-Missouri portion of Bowman's application. Over 60 of these complain about inconsistent and excessive transit times, and a number complain about pickup and delivery problems, loss, damage, shortage, tracing difficulties, misrouting, interline problems, unsuitable or inadequate equipment, customer complaints, and lost business and penalties. Generally, these witnesses have shown that the transit times on a substantial volume of their traffic between the Kansas-Missouri points Bowman seeks to serve and points in the Southeast is at least 1 day more than is proposed by Bowman. Roadway and Transcon have declined to handle some of the supporting witnesses' traffic. Shippers with traffic moving between points in Florida and points in the involved Kansas-Missouri territory represent that they must rely on joint-line service; and while those which utilize Bowman's service indicate that it is satisfactory, they are not satisfied with the service of the carriers with which Bowman interlines. Bowman submits that only three general-commodity motor carriers (Gordons, Watson-Wilson, and T.I.M.E.[4]) oppose this portion of its application, and while holding authority to serve a broad territory in the South, they collectively serve only Birmingham and Mobile, Ala.; Nashville, Chattanooga, and Knoxville, Tenn.; Atlanta, Augusta, Athens, and Rome, Ga.; and Charleston and Greenville, S.C. Assertedly, even if these carriers were to serve each of their authorized points, there would still be no service from the entire State of Florida; no service from those points in Georgia south of U.S. Highway 80; no service from those points in South Carolina north of Greenville, Columbia,

[4]It is noted that in *T.I.M.E.-DC, Inc.—Investigation & Revocation of Certs.*, 113 M.C.C. 897 (1971), it was found that respondent T.I.M.E. has been in violation of section 216(b) of the Interstate Commerce Act and has failed to comply with the terms and conditions of its certificates in that it has not been rendering reasonably continuous and adequate service in the transportation of general commodities at numerous points in, among other States, Missouri and Tennessee. That proceeding is pending on petition.

and Charleston; and no service from the entire States of North Carolina and Virginia.

The extent of Roadway's opposition to Bowman's application has been raised in pleadings. In exhibit 1865, at pages 2 and 3, Roadway indicates that it opposes the Bowman application insofar as authority is sought (1) between Birmingham, on the one hand, and, on the other, Houston and Fort Worth, (2) between Houston and Dallas, and (3) between Memphis and West Memphis, on the one hand, and, on the other, Oklahoma City. This is qualified by the statement on page 5 of the exibit that appendix 2 thereto, which is Roadway's systems map, shows the Roadway points that are in direct conflict with points of the applicants. The map includes Kansas City, Carthage, Topeka, and Springfield. The examiners did not include Roadway in their list of carriers offering single-line service between Atlanta and/or Birmingham, on the one hand, and, on the other, Kansas City; and Roadway has not specifically taken exception to this omission. While Roadway technically opposes the Kansas-Missouri portion of Bowman's application, it is noted that its evidence is directed primarily to traffic moving between Texas points, on the one hand, and, on the other, Roadway terminal points in Georgia, North and South Carolina, Tennessee, Alabama, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. In any event, Roadway's authority in southern Georgia and Alabama is limited and it does not render service to points in Florida. Although Consolidated acquired authority to serve Atlanta since the hearing and can thus render single-line service between this point, on the one hand, and, on the other, Kansas City and Springfield, its operations in the Southeast are limited.

Additionally, Bowman has shown that the present and future public convenience and necessity require the extension of its operations to points in the remaining States it proposes to serve. The evidence of the supporting witnesses establishes a clear and convincing public need for single-line motor carrier service between the broad southeastern and easten seaboard territory served by Bowman, on the one hand, and, on the other, the Arkansas points it proposes to serve. Approximately 100 witnesses supported this portion of Bowman's proposal. Many expressed a need for single-line service between the Arkansas points, on the one hand, and, on the other, points in Florida, Georgia, and the Carolinas (other than Birmingham, Atlanta, and Charlotte) for which no such service is available. Existing carriers which hold authority to operate between the Arkansas

points and points which Bowman presently serves are limited territorily either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants proposes such an extensive service.

Similarly, the protestants are unable to provide the full scope of the single-line services proposed by this applicant between the Louisiana points (excluding New Orleans from consideration at this time) it proposes to serve and the territory it currently serves. Over 150 witnesses support this portion of Bowman's proposal, and they too have demonstrated material inadequacies in the transportation services they now receive. With respect to New Orleans, the approximately 30 shippers supporting this aspect of Bowman's application have shown that the service they are receiving between specified points in Alabama and Tennessee, on the one hand, and, on the other, New Orleans is not adequate. None of the protestants provides single-line service between all of the points Bowman serves in its authorized territory here under consideration and New Orleans. Regarding Texas, it is noted that more witnesses from the Dallas-Fort Worth area testified in support of Bowman's application than any of the other applicants. Also, witnesses from numerous points throughout Bowman's authorized territory testified in support of this portion of its application. Many of these shippers do not presently have single-line service to this important area, and none of the other applicants proposes to render the extensive single-line services to be proffered by Bowman. Of the carriers which operate between the southern Texas points which Bowman proposes to serve and its authorized territory, only Roadway and Ryder can provide a service even remotely comparable to that proposed. Shippers' testimony, however, demonstrates that the latter is not rendering adequate service, whereas the former's authority in the Southeast is, as noted above, limited in certain respects.

We recognize that, as was pointed out in *Hancock-Trucking, Inc., Ext.—Gulf and West Coast Routes*, 62 M.C.C. 513, 535 (1954), "the national transportation policy does not tolerate the thought that all shippers and all points are entitled to single-line motor carrier service." Many shippers have nevertheless demonstrated, on the present record, that they require the single-line service here authorized to be provided by Bowman, and that the lack of such service has been harmful to them. See *Roadway Exp., Inc.*,

Ext.—Birmingham, Dallas, Houston, 82 M.C.C. 689 (1960). Thus, we believe that Bowman has also shown a need for an extension of its authority into Arkansas, Louisiana, and Texas in the manner hereinafter set forth in our findings.

Johnson proposes an "overhead" single-line service between a number of major points in Texas, Louisiana, and Mississippi, on the one hand, and, on the other, points it serves along the eastern seaboard and in the gulf territory. Its application is supported by 236 witnesses located throughout the areas it serves or proposes to serve. Their testimony establishes that the existing service on small shipments traffic between the involved territories is generally inadequate. Many of the supporting witnesses validly complain with respect to lengthy and undependable transit times; and their studies, considered on the whole, demonstrate that inconsistent and excessive transit times have been experienced on a substantial portion of the involved traffic. Complaints also were voiced by many of the shippers with respect to poor pickup and delivery service, tracing problems, and excessive loss and damage. Many of the shippers' problems can be attributed to the existing joint-line motor service. As pointed out by Johnson, of the major eastern seaboard carriers which compete with it and render a portion of the involved joint-line services, only Akers opposes Johnson's application. Major east coast motor common carriers such as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, and R. C. Motor failed to participate in this proceeding; and it is therefore apparent that important segment of the involved joint-line motor carrier system does not oppose the Johnson application.

Of the single-line protestants which serve between the points Johnson proposes to serve and its present territory, Ryder does not hold authority to serve the Dallas-Fort Worth area and much of the Carolinas; Roadway holds authority to perform the proposed "overhead" service but its service was the subject of many of the shippers' complaints; and the authorities of T.I.M.E. and Transcon are limited to such an extent that they can provide only a portion of the service proposed by Johnson. It is true that McLean now holds authority to provide single-line service comparable to that proposed by Johnson, but that carrier did not protest Johnson's application and there is no evidence on this record that it is ready and willing to furnish the needed service. In our opinion, Johnson has demonstrated that there is a need for its proposed service, except to the extent set forth below. The stated purpose of Johnson's seeking

authority to operate over the alternate route between Shreveport and Baton Rouge, La., is solely to enable Johnson to move its empty equipment from the northern route to the southern route for use at southeastern points. Inasmuch as specific authority is not required to perform this type of operation, however, and because Johnson has not otherwise shown any reason for a grant of such authority, this portion of its application will be denied.

Deaton and Baggett admittedly filed defensive applications herein in an effort to have all of the applications denied. They concede that their applications represent an attempt to keep pace with any further realignment of existing motor carrier operational patterns; and each, in its "conditional" exceptions, contends that the granting of its application would be a necessary corollary to a grant of any of the other applications. On brief, Deaton asserted that all of the applications should be denied inasmuch as applicants had failed to show a need by the shipping public for their services, and because any expressed need could be met by existing carriers, including those authorized to perform service in the involved territory after the record herein was closed. Deaton does not take exception to the examiners' denial of its application, along with the other applications. Thus, it concedes that it has not shown a need for its proposed service. A grant of authority to this carrier cannot be justified solely on the basis that, without it, Deaton will not be able to survive and remain a viable competitive carrier in the area if any of the other applications are granted. Nor do we believe that Deaton has shown on this record that the above-described grants to Red Ball, Bowman, and Johnson will materially adversely affect its operations. Deaton's application will therefore be denied. Baggett submits that although it is still a "defensive" applicant, it became a "serious" applicant after failing to cause all applicants to withdraw; and it believes that the record has disclosed a public need for its proposed service. Baggett's application will also be denied. While it, unlike Deaton, is now unwilling to concede that it has failed to show a need for its proposed service, we think it plain that this is indeed the case. Baggett, by its "conditional" exceptions and weak shipper support (approximately 50 shippers support its application) has demonstrated tht it is not interested in the public convenience and necessity but rather only in maintaining the competitive *status quo*.

Undoubtedly, granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier services. It also is true that the above-described grants of authority will subject some of protestants' traffic

to the possibility of diversion. With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected" by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. *Liberty Trucking Co. Ext.—Lake Mills, Wis.*, 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience.

Other matters.—A few other matters require comment. First, some of the protestants challenge the feasibility of the proposals of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in *West Brothers Inc., Extension—Baton Rouge, La.*, 106 M.C.C. 792, 799 (1968), modified on other grounds at 108 M.C.C. 485 (1969):

> Evidence that applicant's transit time for existing services over a shorter distance is more than *** [the proposed transit time] is not conclusive proof that it will not render *** [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.

Additionally, Johnson has revised its operations and effective March 13, 1966, it commenced using two-man teams which would be utilized on a direct nonstop basis between Charlotte and the seven proposed terminal points here under consideration.

Second, inasmuch as the authority sought by Red Ball partially duplicates authority presently held by this applicant, the grant of authority made herein, to the extent of such duplication, shall be construed as conferring not more than a single right. Third, although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the

"In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Cambell, thereby rendering the issue as to the vulnerability of the former's operations moot.

use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language. Inasmuch as Moss Point, Miss., lies within the commercial zone of Pascagoula, Miss., no specific authority is required to enable Bowman to serve the former point in light of the findings below. See *Commercial Zones and Terminal Areas*, 54 M.C.C. 21, 108 (1952); 49 CFR 1048.101 and 1049.1. Finally, with respect to Bowman, its grant of authority will be modified to conform to current Commission practice. Fourth, authority in terms of miles about a particular point will not be granted herein since it is administratively undesirable. See *Glennon Transports, Inc., Extension—New York, N. Y.*, 78 M.C.C. 157 (1958).

And last, Johnson indicates that it proposes to offer daily, scheduled, LTL service between Dallas and Savannah by tacking regular- and irregular-route authority. Clearly, the separate nature of the authorities would not be preserved if in fact Johnson provided such a service. As this represents only a minor aspect of Johnson's proposal, we think that its application should be granted with the understanding that the regular-route rights will not be used in combination with Johnson's existing irregular-route authority for the performance of an unauthorized regular-route service between Dallas and Savannah. We believe that otherwise the separate nature of Johnson's irregular-route rights can be maintained, but we do not wish to infer that any conversion of these operations into regular-route operations in connection with through service to and from points on the regular routes authorized herein will be condoned.

FINDINGS

In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), we find that applicants have failed to establish that the present or future public convenience and necessity require the proposed operations; and that these applications should be denied.

In No. MC-2229 (Sub-No. 132), we find that the present and future public convenience and necessity require operation by

applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) over the routes, between the points, and in the manner set forth in part I of appendix H to this report, (1) restricted against the transportation of traffic moving between Memphis, Tenn., and points in its commercial zone, on the one hand, and, on the other, Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and points in their respective commercial zones, (2) subject to the condition that the authority granted herein, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring 5 years after the effective date of the certificate to be issued herein, and (3) subject to the condition that to the extent such authority duplicates the authority presently held by applicant, it shall not be construed as conferring more than a single operating right.

In No. MC-94201 (Sub-No. 56), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) over the routes, between the points, and in the manner set forth in part II of appendix H to this report (1) restricted to the transportation of traffic moving from, to, or through Birmingham, Montgomery, and Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.; (2) with service at New Orleans restricted to traffic originating at or destined to points in Tennessee and those points in Alabama on and north of U.S. Highway 78; and (3) restricted against the transportation of (a) traffic originating at or received from connecting carriers at Memphis, Tenn., and points in its commercial zone and destined to points west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Louchiching Counties, Minn., to the international boundary line between the United States and Canada; or (b) traffic originating at points west of the line described in (3)(a) above and destined to or delivered to connecting carriers at Memphis, Tenn., and points in its commercial zone; and subject to prior publication in the Federal Register of notice of the authority granted herein.

In No. MC-106401 (Sub-No. 18), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over the routes, between the points, and in the manner set forth in part III of appendix H to this report, subject to a restriction in part (1) of the grant to traffic moving from, to, or through Atlanta, Ga.; and subject to a restriction in part (2) of the grant to traffic moving from, to, or through Gulfport, Miss.

We further find that the applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18) are fit, willing, and able properly to perform such services and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that an appropriate certificate authorizing the above-described operations should be granted to each of the three above-described applicants; and that the applications in all other respects should be denied.

Upon compliance by each of the three applicants with the requirements of sections 215, 217, and 221(c) of the act and with our rules and regulations thereunder, an appropriate certificate will be issued that applicant.

An appropriate order will be entered.

APPENDIX A

Authority sought

No. MC-1124 (Sub-No. 206), filed June 18, 1965, as amended.

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.[*]

(REENTITLED)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA

General commodities including classes A and B explosives (but excepting commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Serving the points of Birmingham, Mobile, and Montgomery, Ala.; Columbus, Ga.; Jackson, Miss.; and Pensacola, Fla., as intermediate points on applicant's presently authorized regular routes.

(2) Serving as points of joinder only, the points of Atmore, intersection of U.S. Highways 29 and 80 near Tuskegee, Flomaton, Woodstock and Selma, Ala., and Poplarville, Miss.

(3) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to Macon, Ga., thence over Georgia Highway 87 to Jackson, Ga., thence over U. S. Highway 23 to Atlanta, and return over the same route, serving the intermediate points of Montgomery, Ala., and Columbus, Ga., and serving Selma, Ala., and the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as points of joinder only.

(4) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, and return over the same route, serving the intermediate point of Birmingham, Ala.

(5) Between New Orleans, La., and Birmingham, Ala.:

From New Orleans over U. S. Highway 11 to Birmingham, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., and Poplarville, Miss., as points of joinder.

(6) Between Pensacola, Fla., and Flomaton, Ala.:

From Pensacola over U. S. Highway 29 to Flomaton, and return over the same route, serving no intermediate points, and serving Flomaton, Ala., as a point of joinder only.

(7) Between Woodstock, Ala., and Mobile, Ala.:

From Woodstock over Alabama Highway 5 to junction U. S. Highway 43 near Thomasville, Ala., thence over U. S. Highway 43 to Mobile, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., as a point of joinder.

(8) Between Montgomery, Ala., and Atlanta, Ga.

From Montgomery over U. S. Highway 80 to Tuskegee, Ala., thence over U. S. Highway 29 to Atlanta (also from Montgomery over Interstate Highway 85 to Atlanta)

[*] Herrin Transportation Company was merged into McLean Trucking Company, effective October 1, 1969, as authorized in No. MC-F-10121, *McLean Trucking Company—Control and Merger—Herrin Transportation Company* (not printed), decided August 5, 1969.

and return over the same route, serving no intermediate points, and serving the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as a point of joinder only.

(9) Between Atlanta, Ga., and Columbus, Ga.:

From Atlanta over Georgia Highway 85 to Woodbury, Ga., thence over Georgia Highway 85E to Manchester, Ga., thence over Georgia Highway 85 and alternate U. S. Highway 27 to Columbus and return over the same route, serving no intermediate points.

(10) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U. S. Highway 31 (also over Interstate Highway 65) to Mobile and return over the same route, serving the intermediate point of Montgomery, Ala., and serving the point of Flomaton, Ala., as a point of joinder only.

(11) Between Selma, Ala., and Montgomery, Ala.:

From Selma over Alabama Highway 14 to Prattville, Ala., thence over U. S. Highway 82 to Montgomery and return over the same route, serving no intermediate points, and serving Selma as a point of joinder only.

(12) Between Mobile, Ala., and Baton Rouge, La.:

From Mobile over U. S. Highway 98 to Lucedale, Miss., thence over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 21 to Covington, La., thence over U. S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, and serving Poplarville, Miss., as a point of joinder only.

(13) Between Birmingham, Ala., and Columbus, Ga.:

From Birmingham, Ala., over U. S. Highway 280 to Columbus and return over the same route, serving no intermediate points.

RESTRICTION: Service proposed at the points and over the routes specified in paragraphs 1 through 13 above is restricted to traffic moving to, from or through Memphis, Tenn., or Monroe, New Orleans or Baton Rouge, La.

No. MC-2229 (Sub-No. 132), filed May 17, 1965, as amended.

RED BALL MOTOR FREIGHT INC., EXTENSION - ATLANTA, GA.

General commodities including classes A and B explosives (but excepting household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 29, thence over U. S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala., for purposes of joinder only:

From Meridian over U. S. Highway 11 to Tuscallosa, and return over the same route, serving no intermediate points.

RESTRICTION: Restricted against the transportation of property moving between Memphis, Tenn., and its commercial zone, on the one hand, and, on the other,

Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and their respective commercial zones.

No. MC-11207 (Sub-No. 233), filed May 28, 1965, as amended.

DEATON TRUCK LINE, INC., RE-ENTITLED DEATON, INC., EXTENSION
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), over irregular routes:

(1) Between Atlanta, Ga., on the one hand, and, on the other, Monroe and Shreveport, La., Dallas and Fort Worth, Tex., and points within 10 miles of Dallas and Fort Worth.

(2) Between New Orleans, La., on the one hand, and, on the other, Baton Rouge, La., Orange, Beaumont, Texas City, and Houston, Tex., and points within 10 miles of Houston.

RESTRICTION: Restricted against local service between New Orleans and the points specified.

No. MC-18088 (Sub-No. 36), filed May 18, 1965, as amended.

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

(2) Between Atlanta, Ga., and Houston, Tex.:

From Atlanta over U. S. Highway 29 to Opelika, Ala., thence over Interstate Highway 85 to Montgomery, Ala. (also from Opelika over U. S. Highway 29 to junction U. S. Highway 80, thence over U. S. Highway 80 to Montgomery), thence over U. S. Highway 31 to Mobile, Ala., thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 to junction U. S. Highway 165 at Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge and Lake Charles, La., Orange, Beaumont and Texas City, Tex., and those within 10 miles of Houston.

(3) Between Montgomery, Ala., and junction U. S. Highways 11 and 80 near Cuba, Ala., over U. S. Highway 80, for purpose of joinder only, serving no intermediate points.

(4) Between junction of U. S. Highways 71 and 190 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, for purpose of joinder only, serving no intermediate points.

(5) Between junction U. S. Highway 78 and Alabama Highway 21 near Anniston, Ala., and the junction of U. S. Highways 231 and 80 near Montgomery, Ala., for purpose of joinder with applicant's irregular-route operations:

From junction U. S. Highway 78 and Alabama Highway 21 over Alabama Highway 21 to junction U. S. Highway 231, thence over U. S. Highway 231 to junction U. S. Highway 80, and return over the same route, serving the intermediate point of Sycamore.

RESTRICTION: Restricted to traffic moving between points east of the Mississippi River except Baton Rouge, La., on the one hand, and, on the other, points west of the Mississippi River and Baton Rouge.

No. MC-59680 (Sub-No. 147), filed June 16, 1965.

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, GA

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U.S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Atlanta, Ga., and Shreveport, La.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Shreveport, and return over the same route.

Intermediate point: Jackson, Miss.

Joinder point: Monroe, La.

No. MC-76177 (Sub-No. 304), filed July 30, 1965.

BAGGETT TRANSPORTATION COMPANY EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, blasting supplies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 29 to junction U. S. Highway 80 (near Tuskegee, Ala.), thence over U. S. Highway 80 to Montgomery, Ala. (also from Atlanta over Interstate Highway 85 to Montgomery), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Montgomery and Selma, Ala., Dallas, Tex., those within 15 miles of Dallas, and Those within 15 miles of Fort Worth.

(2) Between Birmingham, Ala., and Fort Worth, Tex.:

From Birmingham over U. S. Highway 11 to junction U. S. Highway 80 (near Cuba, Ala.), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate point: Tuscaloosa, Ala.

(3) Between Montgomery, Ala., and Houston, Tex.:

From Montgomery over U. S. Highway 31 to Mobile, Ala. (also from Montgomery over Interstate Highway 65 to Mobile), thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 via Baton Rouge to Kinder, La., thence over U. S. Highway 165 to the junction of U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Mobile, Ala., Beaumont, Port Arthur, Smith's Bluff, Texas City, and those within 15 miles of Houston.

(4) Between the junction of U. S. Highways 190 and 71 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, serving no intermediate points, for purpose of joinder only.

(5) Between Meridian, Miss., and the junction of U. S. Highways 11 and 190 near Slidell, La., over U. S. Highway 11, serving no intermediate points, for purpose of joinder only.

No. MC-94201 (Sub-No. 56), filed July 12, 1965, as amended.

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading).

(1) Between Birmingham, Ala., and Houston, Tex.:

(a) From Birmingham over U.S. Highway 31 (also over Interstate Highway 65) to Atmore, Ala., thence over Alabama Highway 21 to the Alabama-Florida State line, thence over Florida Highway 97 to junction U.S. Highway 29, thence over U.S. Highway 29 to Pensacola, Fla., thence over U.S. Highway 90 to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstate Highway 10) to Houston and return over the same route, serving the intermediate points of Pensacola, Fla., Mobile, Ala., Grand Isle, Lockport and Golden Meadow, La., Pascagoula and Moss Point, Miss., New Orleans, Baton Rouge and Lake Charles, La., and Orange and Beaumont, Tex., and the off-route points of Port Arthur, Baytown and Texas City, Tex., and those off-route points within a 15 mile radius of Birmingham and Mobile, Ala., Pensacola, Fla., New Orleans, Baton Rouge and Lake Charles, La., and Port Arthur, Beaumont and Houston, Tex.:

(b) From Birmingham over U.S. Highway 11 (also over Interstate Highway 59) to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Meridian, Laurel and Hattiesburg, Miss., and those off-route points within a 15 mile

radius of Birmingham, Ala., New Orleans, Baton Rouge and Lake Charles, La., Port Arthur, Beaumont, and Houston, Tex., and Hattiesburg and Meridian, Miss.

(2) Between Brewton, Ala., and Pensacola, Fla.:

Over U.S. Highway 29, serving no intermediate points, as an alternate route for operating convenience only.

(3) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U.S. Highway 11 to Bucksville, Ala., thence over Alabama Highway 5 to Thomasville, Ala., thence over U.S. Highway 43 to Mobile and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(4) Between Poplarville, Miss., and Baton Rouge, La.:

From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La., thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(5) Between Montgomery, Ala., and junction U.S. Highways 11, 80, and Interstate Highway 59:

Over U.S. Highway 80, serving all intermediate points.

(6) Between Birmingham, Ala., and Fort Worth, Tex.:

(a) From Birmingham over U.S. Highway 11 (also over Interstate Highway 20) to Meridian, Miss., thence over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth and return over the same route, serving the intermediate points of Meridian, Jackson, and Vicksburg, Miss., Monroe, Ruston and Shreveport, La., and Marshall, Gladewater, Longview and Dallas, Tex., and those off-route points within a 15 mile radius of Birmingham, Ala., Fort Worth, Tex., and Meridian, Jackson and Vicksburg, Miss.:

(b) From Birmingham over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, Tex.-Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth and return over the same route, serving the intermediate points of Columbus, Greenwood and Greenville, Miss., El Dorado and Crosset, Ark., Texarkana, Tex.-Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark., and those off-route points within a 15 mile radius of Birmingham, Ala., Dallas and Fort Worth, Tex., Texarkana, Tex.-Ark., Columbus, Greenwood and Greenville, Miss.

(7) Between Birmingham, Ala., and Topeka, Kans.:

From Birmingham over U.S. Highway 78 to Memphis, Tenn., thence over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo., thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka and return over the same route, serving the intermediate points of Memphis, Tenn., Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo., and Kansas City, Mo.-Kans., and those off-route points within a 15 mile radius of Birmingham, Ala., and Kansas City, Mo.-Kans., and Springfield, Mo.

(8) Between Memphis, Tenn., and Little Rock, Ark.:

From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving off-route points within a 15 mile radius of Little Rock, Ark.

(9) Between West Memphis, Ark., and Little Rock, Ark.:

From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., serving off-route points within a 15 mile radius of Little Rock, Ark.

(10) Between Little Rock, Ark., and Greenville, Miss.:

From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.:

Over U.S. Highway 75 (also over Interstate Highway 45), serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.:

Over Interstate Highway 30 (also over U.S. Highway 67), serving no intermediate points, as an alternate route for operating convenience only.

RESTRICTIONS:

(a) Restricted to service on traffic moving from, to, or through Birmingham, Ala., Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.

(b) Service at New Orleans, La., restricted to traffic originating at or destined to points in Tennessee and points in Alabama on and north of U.S. Highway 78.

(c) Restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not as to traffic moving through Memphis, Tenn., and its commercial zone) on the one hand, and points west of the Mississippi River, on the other hand.

No. MC-106401 (Sub-No. 18), filed March 23, 1965.

JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Jackson, Miss., Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

RESTRICTION: Restricted to traffic moving from, to, or through Atlanta, Ga.

(2) Between New Orleans, La., and Houston, Tex.:

From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge, La., Orange, Beaumont, and Texas City, Tex., and those within 10 miles of Houston.

RESTRICTION: Restricted to traffic moving from, to, or through Gulfport, Miss., (no local service between New Orleans and points on the above route).

(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., over U.S. Highway 80 for operating convenience only.

(4) Between Shreveport, La., and the junction of U.S. Highways 71 and 190 near Baton Rouge, La., over U.S. Highway 71 for operating convenience only.

No. MC-111231 (Sub-No. 67), filed June 14, 1965, as amended.

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA

General commodities including classes A and B explosives (but excepting commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U.S. Highway 82 in Arkansas.

(2) Between Texarkana, Ark., and Sherman, Tex.:

From Texarkana over U.S. Highway 82 to Sherman, and return over the same route.

All intermediate points.

(3) Between Birmingham, Ala., and Memphis, Tenn.:

From Birmingham over U.S. Highway 78 to Memphis, and return over the same route.

No intermediate points.

(4) Between Texarkana, Ark., and Dallas, Tex.:

From Texarkana over U.S. Highway 67 to Dallas, and return over the same route.

All intermediate points.

RESTRICTION: Service is restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not on traffic moving through Memphis and its commercial zone), on the one hand, and, on the other, points east of the Mississippi River.

APPENDIX B

Protestants[1]

1. Holloway Motor Express, Inc.
2. Consolidated Freightways Corp. of Delaware
3. Illinois-California Express, Inc.
4. Southwestern Transportation Company
5. Alamo Express, Inc.
6. Central Freight Lines, Inc.
7. Red Arrow Freight Lines, Inc.
8. Eagle Motor Lines, Inc.
9. T.I.M.E. Freight, Inc.
10. Arkansas-Best Freight System, Inc.
11. Watson-Wilson Transportation System, Inc.
12. Trans-Cold Express, Inc.

[1]By orders of the Commission, the names of protestants numbered 9, 11, 25, 34, and 39 have been changed.

13. Missouri Pacific Railroad Company
The Texas & Pacific Railway Company
Missouri Pacific Truck Lines, Inc.
The Texas & Pacific Motor Transport Co.
14. Red Line Transfer & Storage Company, Inc.
15. A &H Truck Line, Inc.
16. Viking Freight Company
17. Gordons Transports, Inc.
18. Mercury Motors, Incorporated
19. Mercury Motor Express, Inc.
20. Carolina Freight Carriers Corporation
21. Akers Motor Lines, Inc.
22. M R & R Trucking Company
23. Mercury Freight Lines, Inc.
24. Howard Hall Company, Inc.
25. West Brothers, Inc.
26. Deaton, Inc.
27. Floyd & Beasley Transfer Company, Inc.
28. Baggett Transportation Company
29. Georgia-Florida-Alabama Transportation Co., Inc.
30. Pilot Freight Carriers, Inc.
31. The Mason and Dixon Lines, Incorporated
32. Georgia Highway Express, Inc.
33. Campbell Sixty-Six Express, Inc.
34. Jack Cole Company, Dixie Highway Express, Inc.
35. Brown Transport Corp.
36. East Texas Motor Freight Lines, Inc.
37. Transcon Lines
38. Roadway Express, Inc.
39. Herrin Transportation Company
40. ET&WNC Transportation Company
41. United Motor Freight Terminal, Inc.
42. Red Ball Motor Freight, Inc.
43. Ryder Truck Lines, Inc.
44. Braswell Motor Freight Lines, Inc.

APPENDIX C

Protestants' replies

Replies were filed separately by Pilot Freight Carriers, Inc., to the exceptions of applicant in No. MC-94201 (Sub-No. 56); separately by Ryder Truck Lines, Inc., to the exceptions of applicant; jointly by Mercury Freight Lines, Inc.; and East Texas Motor Freight Lines, Inc., to the exceptions of applicants and interveners; jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc. (by order of the Commission entered January 14, 1969, the name of this carrier was changed from T.I.M.E. Freight, Inc.), Transcon Lines and Roadway Express, Inc. of Mississippi (formerly West Brothers, Inc., modified by order of the Commission, entered March 18, 1970), to the exceptions of applicant in No. MC-106401 (Sub-No. 18), jointly by

Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Consolidated Freightways, Inc., Georgia-Florida-Alabama Transportation Co., Inc., Gordons Transports, Inc., Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Yellow Freight System, Inc., to the exceptions of applicants in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67); jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Transcon Lines, Holloway Motor Express, Inc., T.I.M.E.-DC, Inc., Consolidated Freightways Corp. of Delaware, Akers Motor Lines, Inc., Yellow Freight System, Inc., and Braswell Motor Freight Lines, Inc. to the exceptions of applicant in No. MC-94201 (Sub-No. 56), embracing a renewed motion to strike appendixes A and B to exhibit 1985; jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Campbell Sixty-Six Express, Inc., Transcon Lines, Gordons Transports, Inc., Braswell Motor Freight Lines, Inc., Akers Motor Lines, Inc., Georgia-Florida-Alabama Transportation Co., Inc., and T.I.M.E.-DC, Inc., to the exceptions of applicant in No. MC-2229 (Sub-No. 132); separately by Deaton, Inc., to the exceptions of applicants and interveners; separately by Jack Cole-Dixie Highway Company (by order of the Commission, entered October 31, 1968, the names of merged protestants Jack Cole Company and Dixie Highway Express, Inc., were changed to Jack Cole-Dixie Highway Company) to the exceptions of applicants; jointly by Alamo Express, Inc., Central Freight Lines, Inc., and Red Arrow Freight Lines, Inc., to the exceptions of applicants in Nos. MC-11207 (Sub-No. 233), MC-76177 (Sub-No. 304), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18); jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Roadway Express, Inc., of Mississippi to the exceptions of intervening shippers; and separately (late tendered) by ET&WNC Transportation Company to the exceptions of applicants in Nos. MC-76177 (Sub-No. 304) and MC-94201 (Sub-No. 56).

APPENDIX D

Pleadings

In its exceptions, Herrin contends that the examiners erred in considering all applications on an erroneous concept that all must be granted or all denied and in finding that a grant of the Herrin application would result in a realignment of the traffic patterns and competitive relationships of existing carriers. Herrin submits that it does not seek to extend its operations beyond its present territory but seeks only to serve seven specific points which are actually intermediate under Herrin's presently authorized operations. Inasmuch as Herrin can now provide service to and from Atlanta, assertedly a grant of authority to and from this point would merely allow it to use all feasible routes for the operations. It believes that the examiners erred in concluding that the transit studies and related testimony, as a whole, do not warrant the conclusion that the existing service is inadequate to meet the real needs of the shipping public in the territory involved in the Herrin application. Herrin excepts to the findings and conclusions of the examiners that it failed to prove that the public convenience and necessity require the grant of its application, and it submits that in considering the criteria for selection of applicants it is a logical choice.

Red Ball contends that the examiners erred in concluding that the 933 public witnesses failed to establish a need for additional carrier service and that a grant of its

application would have an adverse affect on existing carrier service. Assertedly, the 130 public witnesses presented by Red Ball, the additional 24 witnesses called by other parties but testifying in support of Red Ball, and the additional 19 witnesses who testified in support of all applications clearly demonstrate a need for this applicant's proposed service. It is contended that the inequity of the examiners' handling of this proceeding is demonstrated by their failure to even discuss that portion of Red Ball's proposal which was unopposed. Applicant submits that protestant East Texas has filed an application in MC-41432 (Sub-No. 103) seeking authority substantially indentical to that sought by Red Ball. Assertedly, this demonstrates that this protestant has ceased to believe that there is no need for additional authority in the territory involved herein. Red Ball further contends that the examiners erred in concluding that all of the applications must be treated together and in not giving complete and fair treatment to the individual applications. It submits that neither the carriers opposing its application nor the applicants in this proceeding can provide the extensive single-line service proposed by Red Ball between those points presently served by it in Mississippi, Louisiana, Arkansas, Texas, New Mexico, Colorado, and Kansas City, Kans.-Kansas City, Mo., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville. And, assertedly, it is the one applicant in this proceeding that can and will solve the problem of bringing to the smaller cities, towns, and communities adequate and proper transportation service to and from major points of supply and distribution such as Atlanta and Birmingham. Red Ball is willing to have "Performance Report" conditions similar to those imposed in ***West Brothers, Inc., Extension—Baton Rouge, La.***, 106 M.C.C. 792 (1968), as modified in 108 M.C.C. 485 (1969), imposed on a grant of authority to it. Finally, it asserts that of all the applicants it is best suited, equipped, and establish, and can, at less cost, perform the service between the points it proposes to serve.

In its conditional exceptions, Deaton submits that if this record discloses a public need for additional service between Atlanta and Birmingham, on the one hand, and, on the other, Dallas and Houston, it believes that a grant of its application would be a necessary corollary to the granting of one or more of the other applications. The filing of its application is described as an effort to keep pace with fundamental realignment of existing motor carrier operational patterns in the Southwest which would result from the granting of any or all of the eight applications it opposes.

On exceptions, Strickland contends that the examiners erred (1) in recommending a denial of the Strickland application; (2) in failing to evaluate the merits of Strickland's application separate and apart from consideration of the proof offered by other applicants; (3) in equating growth in existing carriers with capability to adequately meet the growing transportation requirements of supporting witnesses; (4) in finding that where complaints of service failures had been made to existing carriers remedial action has been taken; (5) in finding that the evidence does not warrant the conclusion that the quality of service proposed by applicants would be sufficiently superior to that of existing carrier services to support a grant of the operations proposed; (6) in placing undue emphasis throughout their report on the fact that various applicants to the consolidated proceedings were also protestants to other cases instead of considering established criteria for proving public convenience and necessity in each instance, especially with respect to the application made by Strickland; and (7) in finding that the granting of the Strickland application would result in a material adverse affect on existing carrier services, and could put Red Line out of business.

Baggett, in its conditional exceptions, indicates that initially it was a "defensive applicant" and was willing to withdraw its application if all other applicants agreed to

do the same. When it became clear that the other applicants would not withdraw their applications, Baggett indicates that it became a "serious applicant." Baggett contends that the 40 public witnesses who supported its application proved a definite need for direct, single-line service as related to their respective businesses. It believes that a grant of its application would be a necessary corollary to a grant of any of the other applications and it indicates that exceptions were filed to avoid a situation in which its application would stand finally denied while one or more of the other consolidated applications are pending final decision.

Bowman contends on exceptions that the examiners erred (1) in considering all 10 applications collectively, and neglecting and failing to relate the testimony to the Bowman proposal or to give effect to the multiple complaints directed toward existing carriers; (2) in considering and treating the testimony only in relation to commodities shipped to the substantial exclusion of territories and points involved; (3) in failing to consider the divisible aspects of the Bowman application; (4) in failing to recommend approval of the Bowman proposal to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Kansas City, Springfield, and Carthage, Mo.; (5) in failing to recommend approval of all aspects of the Bowman application; and (6) in arriving at ultimate conclusions and basing their recommendation on broad generalities without specific findings as to the basic facts of record. With respect to the divisibility of its proposal, Bowman contends that only three general-commodity carriers and one specialized carrier have any interest in the proposal to serve the Kansas-Missouri area, and only seven carriers are interested in the Mississippi portion of its proposal. It asserts that the strongest case presented by any applicant was of a need for additional motor carrier service between the authorized Bowman territory, on the one hand, and, on the other, (1) the 10 named Mississippi points, and (2) Topeka and Kansas City, Kans., and Kansas City, Springfield and Carthage, Mo. It is pointed out that more public witness (137) testified in support of the Mississippi portion of the Bowman proposal than appeared for all aspects of 7 of the 10 applicants and more than all witnesses combined of 3 of the applicants. Bowman believes that if the application had been filed simply for authority between its territory in the South and the aforementioned Missouri and Kansas points, it would have received a grant of authority. Assertedly, the 82 witnesses which supported this portion of the application have experienced every conceivable type of difficulty with the existing motor carrier service. Bowman submits that only four carriers hold general-commodity authority between the involved Kansas-Missouri area and any portion of the Southeast, and only three of these carriers, viz, Gordons, Watson-Wilson, and T.I.M.E., oppose this portion of Bowman's application. Furthermore, it is contended that these three carriers, while they hold extensive authority in this area, collectively serve only a limited number of points in Alabama, Tennessee, Georgia, and South Carolina. Bowman submits that even if these carriers served every one of their authorized points, there would still be no service, (1) from the entire State of Florida; (2) from points in Georgia south of U.S. Highway 80; (3) from points in South Carolina north of Greenville, Columbia, and Charleston; and (4) from the entire States of North Carolina and Virginia.

On exceptions, Johnson contends that the examiners erred (1) in generally merging throughout their recommended report their consideration, findings, and conclusions respecting the evidence relating to the Johnson application and the other consolidated applications and thereby failing to evaluate and make adequate findings and conclusions relating to the Johnson application as a separate and independent matter, (2) in finding, on the basis of their erroneous treatment of the applications as a group,

that there is no public need for the service proposed by the Johnson application because existing service is adequate; and (3) in concluding, on the basis of their erroneous treatment of the application as a group, that the benefits of the service proposed by the Johnson application would be outweighed by the material adverse affect that a grant of the Johnson application may have upon existing carrier services. Johnson submits that in restricting service to the transportation of traffic moving from, to, or through Atlanta and Gulfport, Miss., it proposes only an "overhead" operation between present system points, on the one hand, and, on the other, points on the proposed service routes. The proposed "overhead" operation assertedly would provide needed single-line service to and from designated major points in Texas, Louisiana, and Mississippi for traffic originating at or destined to points on Johnson's present system in the States along the Atlantic seaboard and in the Gulf of Mexico territory, without, at the same time, overextending its operations to a multitude of smaller points which can be served adequately in cooperation with local carriers. Johnson submits that it was the first applicant to propose an "overhead", single-line service between these two areas. It is submitted that the Deaton, Baggett, and Floyd & Beasley proposals to serve the same southwestern points do not involve an "overhead" service between the eastern seaboard and the Southwest and these applications were filed as defensive measures. The Johnson application assertedly presents issues quite different from those involved in the applications filed by Herrin, Red Ball, Jones, and Strickland since these other applicants operate in the Southwest and seek to extend their authorities only to the gateways of Birmingham and Atlanta. While Bowman's application involves similar issues, Johnson indicates that this carrier does not serve points in New England and western Pennsylvania which Johnson does serve. Bowman, unlike Johnson, does, however, serve the gateways of Memphis, Tenn., and Birmingham. It is submitted that Bowman's proposal extends much further territorially than that of Johnson. Johnson indicates that only Roadway and Ryder offer single-line service between points on the eastern seaboard, on the one hand, and, on the other, points Johnson proposes to serve.[1] However, it is contended that these carriers are highly selective in the traffic they will handle and they are not able to serve all of the points Johnson presently serves. Further, Johnson contends that in view of the fact that after the commencement of these proceedings Roadway was authorized in another proceeding to acquire substantially the same rights which it is seeking herein, regardless of any possible diversion from the carriers protesting the Roadway application herein, it would be a miscarriage of justice for the Commission to deny Johnson's application because of its possible effect on Roadway. Although several east coast carriers (Pilot, Mason and Dixon, ET&WNC, Mercury Motors, and Carolina) participated in this proceeding they did not oppose Johnson's application. Additionally, it is pointed out that such major east/south carriers as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, McLean Trucking Company, and R.C. Motor Lines failed to participate herein. Johnson contends that inasmuch as an important segment of the joint-line system did not protest the Johnson application and neither evidenced the service they have available nor its adequacy or the impact upon them of a grant of authority, there is no substantial evidence in the record to support the examiners' findings that there is available existing joint-line service adequate to meet the needs of the shippers.

On exceptions, Jones contends that the examiners erred in failing to find that the public convenience and necessity requires its proposed operation entirely or in part. Specifically, it contends that while the examiners found that a need is shown for additional service relating to less-than-truckload (LTL) shipments of commodities requiring refrigeration, including meats, candies, and pharmaceuticals, they erred in

[1] The operations performed under the McLean-Herrin merger are not included in the statement.

failing to award the grant of such authority to this applicant. With respect to refrigerated service, Jones points out that it operates 111 trailers equipped with mechanical refrigeration, which is more than all of the other applicants collectively operate. It handles combination loads of perishable and nonperishable commodities in the same trailer and it presently provides LTL refrigerated service to a number of shippers. Assertedly, if the volume of refrigerated traffic shippers have shown to be moving is considered on an annual basis shipments to Atlanta would exceed 37 million pounds a year and approximately 4 million pounds would move annually to Birmingham. Annually, 10.5 million pounds moves outbound from Atlanta to points Jones is authorized to serve. At least one of the supporting shippers indicates that it cannot ship commodities requiring refrigeration from Atlanta to points in Arkansas and Mississippi during the summer months because refrigerated service is not available. Jones submits that it is the only applicant herein which presently provides LTL refrigerated service. With respect to existing service, Jones submits that the examiners erred in finding that the complaints were minimal and that shippers have recourse where carriers refuse to render service. Jones indicates that it is not interested in traffic moving between Atlanta and Birmingham and it is willing to have a grant of its application restricted accordingly. Also it expresses a willingness to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature controlled trailers. Finally, Jones contends that if the involved application were not heard on a consolidated record, it would have received a grant of authority.

The 41 intervening shippers which support the Johnson application, in their jointly filed execptions, contend that the examiners erred in recommending a more cooperative effort between carriers and shippers as a substitute for competition. Assertedly, the examiners should have found that both the public convenience and necessity and the national transportation policy encourages competition among carriers as a means for improving inadequate service. Further, interveners maintain that the examiner erred (1) in concluding that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier, (2) in determining public convenience and necessity by placing considerations of possible detriment to existing carriers through increased competition ahead of benefit to the public; (3) in concluding that "the primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public"; and (4) by sidestepping the consideration of "monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public ***." Interveners submit that suppression of competition runs counter to both the letter and spirt of the Federal antitrust laws; that only where the intent of Congress is clear and manifest has subsequently enacted regulatory legislation exempted specific practices from the operation of the antitrust laws; and that absent such a showing, the antitrust laws are applicable to a situation where, as here, through the denial of additional service, a monopoly is assured to those carriers already in the field in a particular area. Assertedly, the Commission should reverse the examiners's decision and grant the application of Johnson. Because of the complexity of this proceeding and its importance in terms of public interest, the intervening shippers request that oral argument before the Commission be granted.

Campbell and Gordons, protestants, in their jointly filed "conditional"[1] exceptions to the report but not the order of the examiners, contend that the examiners erred (1) in failing to find that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments; (2) in failing to find that Bowman's proposed joinder of present irregular and proposed regular routes to render scheduled LTL service is contrary to Commission policy, and that a grant of this application would result in Bowman being authorized to serve between the same points over regular and irregular routes; (3) in failing to find that the proposed joinder of irregular and regular routes by Floyd & Beasley, Baggett and Johnson is contrary to Commission policy; and (4) in failing to find that the applications of Red Ball, Baggett, and Jones present joinder problems.

In reply to the exceptions of Bowman, protestant Pilot contends that this applicant now will take anything it can get in the way of a grant. Its proposal to serve named Mississippi, Kansas and Missouri points assertedly is merely an attempt to gain the benefits of serving key traffic points without being burdened with having to serve rural and undeveloped points. Pilot submits that the examiners correctly found that public convenience and necessity do not require the operation for which authority is sought.

In reply to the exceptions of applicants, protestant Ryder contends that Johnson's "overhead" service between large points only is somewhat of a distinction to the degree that Johnson is the most selective carrier and has the proposal least responsive to the alleged transportation needs of the areas involved; that supporting shippers express a need for service between numerous small points; and that in light of Johnson's service to New Orleans, this carrier is incapable of rendering reasonable service even to large points. Ryder maintains that its service, in terms of transit times, is vastly superior to Johnson's between points served by both carriers. Even if the Johnson application were the only one to be granted it is maintained that this carrier would have the opportunity to effect all of the potential diversion. With respect to Red Ball, Ryder contends that this carrier's argument that no single protestant can serve all of the points served by it ignores the fact that there are available in the area involved numerous single-line services as well as hundreds of joint-line services. Assertedly Bowman, after admitting that its case is lost, seeks a "consolation prize", viz. authority to serve specified points in Mississippi, Missouri, and Kansas. While this applicant maintains that Ryder serves only the Mississippi points of Jackson, Meridian, Laurel, and Hattiesburg, Ryder indicates that, as pointed out by the record, it serves points in Mississippi, in addition to those described above. It is submitted that the examiners wisely, properly, and intelligently resolved the few basic issues. Protestant believes that a grant of any of the applications would either cause the involved traffic to move slower because of the dilution of available freight to the carriers involved or would cause no change at all.

Mercury and East Texas, in their joint reply to the exceptions of applicants and of intervening shippers, contend that while the record shows instances of good and bad service by both applicants and protestants, as a whole, the record demonstrates that the examiners correctly concluded that the existing service is reasonably adequate and satisfactory on the whole and that the *status quo* should be preserved by denial of the applications. Assertedly, the record also shows that none of the applicants can perform on a consistent basis a service any more expeditious or dependable than that

[1] Protestants request that if exceptions are filed by the applicants treated in their pleading, the "conditional" exceptions be considered by the Commission. On the other hand, if any of these applicants fails to file exceptions, the pleading may be disregarded by the Commission. Campbell does not participate in this pleading to the extent that it is directed to the application of Bowman since the former withdrew its opposition to the latter's proposal.

which is presently available normally to the shipping and receiving public by existing carriers. With respect to the exceptions of Jones, protestants submit that a grant of authority limited to the transportation of less-than-truckload (LTL) shipments requiring refrigeration could not be economically performed by Jones. Strickland, it is submitted, fails to make any specific record citations to support its claims of error. Herrin assertedly has failed to show any error in the recommended denial of its application and it is submitted that this carrier has now been authorized to extend its system operations from Macon, Ga., into Atlanta by purchase. To substantiate its contention that it would be adversely affected by a grant to Red Ball, East Texas submits that the record shows that in a 1-year period it transported 20.5 million pounds from Atlanta to Dallas, Tex., and 19.6 million pounds in the reverse direction. East Texas indicates that it has over 270 million pounds of annual traffic at stake. Assertedly, Johnson's service record demonstrates that it could not meet the proposed service standards. Protestants point out that although intervening shippers' exceptions make statements of fact, there are no citations to the record and inasmuch as the pleading does not, therefore, comply with rule 96(a) of the Commission's General Rules of Practice it should be stricken or rejected, or given little or no consideration. Additionally, protestants assert that the request of Johnson and the intervening shippers in support of the application of Johnson for oral argument should be denied inasmuch as the issues are not complicated and relate principally to a question of fact.

Johnson, in reply to the contentions of Campbell and Gordons that this application should be denied because it involves the bridging of regular routes with an irregular route, as well as the joinder of regular and irregular routes, submits that its proposed regular routes join its present system at New Orleans, La., and Atlanta, which points are located on its present regular-route system; that any bridging operation over highways in irregular-route territory, if it takes place at all, will be confined to truckload traffic; that it does not propose to directly join proposed regular routes with existing irregular-route authority; and that although it does tack regular with irregular-route authority at common service points, it preserves the character of the respective authorized services. With respect to the conditional exceptions of Deaton and Baggett, Johnson submits that the former did not show the impact upon it of a grant of only the Johnson application and the latter did not prove that a grant of the Johnson application also warrants a grant of the Baggett application. Replying to the exceptions of Herrin, Red Ball, and Strickland, Johnson asserts that its proposal to serve "key points" should not be regarded as "slighting" the small community. Instead, Johnson submits that it is a practical solution to the maintenance of reasonably adequate service in the transportation of small shipments at large cities as well as to the medium and small communities in the Southwest. Single-line service will be provided to the large communities proposed to be served and Johnson will provide the long-haul portion of joint-line service for the shippers and receivers located at the medium and small communities in the Southwest. It indicates that it has obtained from proposed connecting carriers an indication of their willingness to cooperate in the plan.

In their joint reply to the exceptions filed on behalf of Johnson, certain protestants[1] contend that Johnson's proposal, as tested by Johnson's performance, is not realistic. They contend that Johnson's testimony, that its entire operation was to be converted from a relay operation to a sleeper-type of operation is of no value since Johnson failed to introduce into evidence any indication of the progress under the proposed change in its operation, if in fact, such change actually took, or will take, place.

With respect to Johnson's contention that it proposes an "overhead" service between the eastern seaboard and the Southwest, protestants submit that a great many

[1]Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West.

of this application's supporting shippers testified about Texas, Louisiana, and Mississippi, and about nowhere else. Of the remainder, assertedly the vast majority involved service between Atlanta and Texas points. Protestants maintain that the traffic moving between points sought to be served by Johnson is open to diversion if the Johnson application alone is granted. Furthermore, inasmuch as the Texas area is primarily a consuming area and not a manufacturing area, there is an imbalance of traffic and a grant of the Johnson application would further dilute the east-bound traffic. With respect to Johnson's request for oral argument, protestants submit that the proceeding does not present a very complex problem and that the request, therefore, should be denied. It is requested that the examiners report and recommended order be adopted.

Certain protestants,[1] in a joint reply to the exceptions of applicants Deaton, Baggett, Jones, Strickland, and Herrin submit that the exceptions of Deaton and Baggett do not comply with the Commission's General Rules of Practice and do not merit serious consideration, and that not only did Jones, Strickland, and Herrin fail to submit evidence demonstrating that they are rendering the type of service proposed between comparable points but assertedly the record demonstrates their inability to perform the proposed services. Protestants concede that the record demonstrates that there is a need for LTL service on commodities requiring refrigeration. They assert, however, that a grant to Jones or any other applicant to transport such commodities is not warranted by the record. It is submitted that Jones made no proposal to handle this type of traffic exclusively and its only proposal was to transport general commodities and it was dependent upon the establishment of substantial terminals at Birmingham and Atlanta. Assertedly, an operation limited to the handling of commodities requiring refrigeration would not justify the opening of such terminals. Protestants maintain that it would be totally unrealistic to assume that any carrier would successfully operate if such a grant were restricted to the transportation of LTL shipments and even if such authority were not restricted to the handling of LTL shipments it would be unrealistic to assume that Jones, or any other general commodity carrier, could operate over these long routes[2] transporting only refrigerated commodities. With respect to supporting shipper evidence, protestants submit that there are numerous instances wherein the public witnesses either had not investigated the availability of existing services or had failed to use that service, including the service of the supported applicant; that the criticisms of existing service relate to applicants as well as protestants; that some of the complaints about protestants' services which applicants cite in their exceptions leave erroneous implications; that the transit time studies support criticisms of applicants', as well as protestants' services; and that even if, assuming *arguendo*, the service specified shippers were receiving at the time of the hearing was unsatisfactory, additional single-line services[3] have been instituted since the close of the hearing. Assertedly, the effect of a grant of any of these applications

[1] Akers, Braswell, Campbell, Consolidated, Georgia-Florida-Alabama, Gordons, Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E., Transcon, and Yellow Freight.

[2] To illustrate, protestants submit that on its route from Atlanta to Greenville (428 miles), Jones proposes service to only one intermediate point, Birmingham.

[3] Protestants submit that such additional single-line services include four between Atlanta and Dallas, Tex., three between Atlanta and Houston, Tex., five between Atlanta and Baton Rouge, La., four between Atlanta and Jackson, Miss., four between Atlanta and New Orleans, La., two between Atlanta and Kansas City, two between Atlanta and Monroe, La., and two between Atlanta and Little Rock, Ark.

will not be limited to service to the major points proposed to be served by applicants. It is pointed out that the ability of one of the protestants to perform a reasonably adequate service to innumerable smaller points in a specified State is directly dependent upon the economic stability of its service from and to the larger terminal points applicants propose to duplicate. No applicant proposes to render a local distribution service out of any proposed service point. Protestants submit that this Commission should condemn the practice of selectivity advocated by applicants inasmuch as it only increases the problems confronting distribution carriers. In light of the fact that Hefrin can now perform much of the service it proposes to perform herein, protestants maintain that there is no need for a grant of this application. They submit also that when considered in the context of the large number of distribution centers and tremendous amount of traffic involved, an extremely small percentage of shippers and receivers within the involved area actually supported these applications.

In their joint reply to the exceptions of Bowman, certain protestants[1] initially request that official notice be taken of 18 specified motor carrier changes in the involved area that have been approved and authorized since the close of the hearings in this proceeding in August 1967. Protestants contend that no new service should be authorized within this area until all of the new services have been tested and found wanting. Assertedly, Bowman has conceded that it has failed to prove that the public convenience and necessity require any new service to the Texas points from the Southeast. And, it attempts to justify a grant of authority to 10 Mississippi points[2] even though it has not presented any operating proposal under which it could be granted authority to serve only the Mississippi points. Protestants submit that since the close of the hearing Campbell has established terminals at Columbus, Greenville, Greenwood, Hattiesburg, Jackson, and Meridian, and it renders direct service to Laurel; that Roadway-West has has established terminals at Greenville, Hattiesburg, Jackson, Laurel, Meridian, and Pascagoula, and it renders direct service to Greenwood and Moss Point; and that Braswell has established terminals at Jackson and Vicksburg and it renders direct service to Meridian. They contend that if assuming, *arguendo*, supporting shippers have shown that there was a need for additional single-line service between the 10 Mississippi points and Atlanta, such need has been more than adequately met by the introduction of the new single-line services that have been instituted since the close of the hearing. Assertedly, Bowman realizes that it has not shown a public need for additional single-line service to Mississippi on this record since it has subsequently filed an application for authority to serve Mississippi points. With respect to Bowman's allegation that there is public need for additional service between specified Missouri and Kansas points and the Southeast, protestants submit that since the close of the hearing two additional single-line carriers, Campbell and Consolidated, have commenced to provide service between Atlanta and Kansas City, and that another new carrier should not be authorized to serve these points until these new services have been tried and found wanting. Bowman assertedly not only failed to establish that it could provide the scheduling proposed, but it established that it was not providing the service it was holding out under its existing authority. Further, it is submitted that Bowman's application proposes the overlapping and intertwining of regular- and irregular-route authority contrary to the policies set forth in *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23; affirmed 80 F. Supp. 110; (S.D. Iowa 1948); affirmed 35 U.S. 875 (1948). If the Bowman application is granted, some protestants assertedly would be adversely affected. It is submitted that

[1] Roadway, West, Transcon, Holloway, T.I.M.E., Consolidated, Akers, Yellow Freight, and Braswell.

[2] Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Pascagoula, and Vicksburg, Miss.

Holloway would not be able to continue service inasmuch as it receives 71 percent of its operating revenue from a shipper which supports Bowman for service to Kansas City and Topeka notwithstanding the admission of the shipper that Holloway's service is satisfactory. Protestants maintain that inasmuch as Bowman did not except to the examiners' finding that Holloway could not survive if Bowman's application were granted it concedes this fact. Finally, they renew their motion to strike appendixes A and B to exhibit 1985.

Certain protestants,* in their joint reply to the exceptions of Red Ball, contend that the lack of record references to evidence to substantiate claims of error is, in and of itself, fatal to these claims. Protestants submit that there is much more traffic moving inbound to Texas than moving outbound to the Southeast since the Texas area is primarily a consuming area, and not a manufacturing area. A grant of one or more of these applications, assertedly would dilute the eastbound traffic and could very well result in the inability of existing carriers to continue to provide the type and caliber of service that they are presently providing. Since the close of the hearing, Braswell, Herrin, Mercury, and T.I.M.E. have been authorized to render single-line service between Atlanta and Dallas, Tex.; Braswell, Herrin, and Mercury have been authorized to serve between Atlanta and Houston, Tex.; Mercury, Braswell, Herrin, Campbell, and Roadway-West have been authorized to serve between Atlanta and Baton Rouge, La.; Braswell, Campbell, and Roadway-West have been authorized to serve between Atlanta and Jackson, Miss.; and Braswell, Campbell, Herrin, and Roadway-West have been authorized to serve between Atlanta and New Orleans, La. Protestants maintain that the motor carrier growth has far outstripped any economic growth of this area. With respect to serve at small points in Texas, it is submitted that receivers located at these points will receive better service by having the long-haul carriers transport traffic destined to these points, to major Texas points such as Dallas, Houston, or San Antonio for interchange with a distribution carrier such as Red Ball. Even if Red Ball's application were granted, it is pointed out that this carrier would be required to break bulk at Dallas or Houston on shipments destined to these small Texas points.

Deaton, in its reply to the exceptions of Herrin, Red Ball, Strickland, Baggett, Johnson, Bowman, Jones, and intervening shippers, contends generally that nothing in these exceptions seriously detracts from the correctness of the examiners' decision or supports any result different from that recommended by the examiners. It submits that if any new authority is granted between Atlanta and Birmingham, on the one hand, and, on the other, New Orleans, Memphis, and points in Mississippi, more than $3 million of its annual revenue would be subject to diversion. If only the Johnson application were granted, Deaton indicates that it could be deprived of annual revenues of at least $190,000. A grant of the Red Ball application would assertedly have a greater impact than a grant of the Johnson application. Strickland's proposed single-line service is in direct competition with Deaton's single-line service in the above-described area. Deaton submits that Herrin, notwithstanding its purchase of authority into Atlanta and its subsequent merger into McLean, seeks authority herein for a short service route between Memphis and Atlanta through Birmingham. A grant of authority to render a new single-line service over the Atlanta-Birmingham-Memphis route to Herrin would assertedly subject Deaton to annual revenue losses of approximately $275,000. Furthermore, it is submitted that there is a paucity of support for a new service between Atlanta, Birmingham, and Memphis. With respect

*Roadway, West, Campbell, Transcon, Gordons, Braswell, Akers, Georgia-Florida-Alabama, and T.I.M.E.

to Bowman's plea for a partial grant, Deaton maintains that Bowman's attempt to serve points in Mississippi does not constitute a separate proposal. Instead, it is maintained that service to and from points in Mississippi is proposed only as incidental intermediate point service on its routes. Additionally, Bowman has filed a separate application seeking authority to serve Hattiesburg, Jackson, Laurel, and Meridian, which have a combined population of about 280,000. Under the more recent proposal it does not seek to serve the six other Mississippi points in question which have a combined population of approximately one-half of the four above-described Mississippi points. It is suggested that the question of whether there is a need for service at the involved Mississippi points be resolved in Bowman's more recent application and not herein. Deaton contends that the examiners correctly found that the need for improved and additional service in the transportation of commodities requiring refrigeration is not "sufficient to support a grant of general commodity authority ***." It is submitted that a grant of authority to transport LTL shipments of commodities requiring refrigeration, as indicated in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967), is unacceptable as a matter of law and sound regulatory policy. In conclusion, Deaton maintains that the examiners' findings and conclusion should be affirmed.

In reply to the exceptions of applicants, Cole-Dixie[10] generally contends that all of the applications should be denied; that any grant of new competing authority will jeopardize its ability to continue serving the public between the points it is authorized to serve; that its services are adequate to meet the needs of the shipping public; and that no valid reason exists for an award of competing authority. It is submitted that consolidation of all 10 applications has obtained for the Commission its first opportunity to consider (1) the adequacy of all existing motor carrier services between two of the major economic geographic regions of the United States, and (2) whether there is a need for additional service between those areas. Cole-Dixie submits that the applicants complain about the consolidation only because the inadequacies of their existing services are revealed. Also it it maintained that although existing service is adequate, applicants request new authority that would rearrange the entire route structure and drastically change the competitive situation between the carriers in the Southeast and Southwest. Assertedly, applicants, in a desperate effort to salvage something from this proceeding, argue collectively that in some geographic areas, opposition is less extensive than at other points; that single-line service is required to and from small points; that its proposal consists of a service which the individual applicant considers unique to its operation; and that the impact of a grant would be lessened if specified restrictions or limitations were imposed. Cole-Dixie submits that these arguments are admissions of failure to prove need for the service as proposed. It is concluded that inasmuch as 52 percent of Cole-Dixie's combined revenues are obtained on traffic moving between terminal points at which one or more of the applicants proposes to render a new service, approximately 50 percent of Cole-Dixie's traffic would be subject to diversion. The application of Red Ball poses the greatest threat of diversion to Cole-Dixie inasmuch as the former is Cole-Dixie's largest interchange connection for the subject traffic and is, therefore, in the best position to take the most traffic away. Protestants indicate that they are both losing money and that a loss of traffic, particularly to the western carriers which control so much

[10] By order served October 9, 1968, in No. MC-F-10107, Jack Cole Company and Dixie Highway Express, Inc., were merged and the surviving corporation's name was changed to Jack Cole-Dixie Highway Company. When the context requires, Cole and Dixie will be treated as two separate carriers.

eastbound traffic, will worsen the balance problem within Cole-Dixie's southern network and will cause even further unprofitable operations. It is urged that the recommendation of the examiners be affirmed.

Alamo, Central and Red Arrow, in their joint reply to applicant's exceptions, adopt the replies to the exceptions filed by Mercury and East Texas; Akers and other specified protestants; and Roadway. Protestants submit that the examiners' conclusions and findings should be affirmed.

In their joint reply to the exceptions of intervening shippers, certain protestants[11] list a number of changes in motor-carrier service in the area involved to show the "fluidity of the situation and the complete lack of the predetermined rigidity on the part of the Commission which is apparently the basis of the intervenors' position." Protestants submit that they opposed the intervention since the interveners were raising issues which had not been raised on brief and, therefore, had not been submitted to the examiners. In renewing their objection they indicate that they do not, by replying to interveners, waive or forego any contentions heretofore made in their opposing pleadings. With respect to interveners' contention that existing carriers hold a monopoly of the traffic moving between the cities Johnson desires to serve direct, protestants submit that there was no monopoly at the time of the hearing, and since the hearing the quantum of service in the involved area has increased greatly. Furthermore, protestants cite *York Interstate Trucking, Inc., Extension—Muriatic Acid*, 67 M.C.C. 626, 628 (1956), and *Transport, Inc. Extension—Sioux Falls, S. Dak.*, 81 M.C.C. 751 (1959), for the proposition that even assuming that the existing carriers hold a monopoly, the mere existence of a monopoly, standing alone, would not justify the establishment of a new operation without a showing of inadequacy or some inferiority in the service of existing carriers. Protestants maintain that no need for additional service has been shown since interveners generally either do not know of or have not used the service of existing carriers. With respect to the examiners' alleged finding that existing carriers must be accorded an opportunity to remedy deficiencies in service before additional service is authorized protestants submit that the examiners neither made such a finding, nor did they place possible detriment to existing carriers ahead of any public need. Assertedly, the findings and conclusions of the examiners should be affirmed.

Bowman, in reply to the conditional exceptions of protestant Gordons, contends that its proposed restrictions are understandable; that they do not fall within any of the categories proscribed by the Commission in *Fox-Smythe, supra*, and that they would accomplish the result intended by their proposed imposition. It submits that Gordons' contention, that, because some of Bowman's present authority is irregular route, it should not be granted regular-route authority, is without merit. Furthermore, this contention is moot because Bowman, in MC-94204 (Sub-No. 86), seeks to convert its existing irregular-route authority to regular-route authority.[12]

ET&WNC, protestant, in reply to the exceptions of applicants Bowman and Baggett, submits that the latter is not a serious applicant; that the former failed to establish the feasibility of its proposal; that Bowman's contention that portions of its application should be granted demonstrates that Bowman recognizes that it has not met its burden of proof and is wholly without merit inasmuch as the proposal was an integrated service proposal which must be viewed as a whole; and that Bowman, in its exceptions, ignores the material adverse effect which replicant, among other protestants, would experience from the diversion of traffic resulting from a grant of the application.

[11] Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West.

[12] As noted in the report herein, Bowman's conversion application has been granted

APPENDIX I

Summary of evidence of supporting shippers

ALABAMA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (3)[1] Thompson-Hayward Chemical Co., Mobile Ala. Industrial agricultural and vitamin chemicals, resins in drums and fiberglass cloth	From New Orleans to Mobile each month shipper receives about 12 shipments. Traffic consists of about four truckload (TL) shipments and between six and eight less-than-truckload (LTL) shipments averaging 7,000 pounds a shipment.	Johnson, Baggett, and West Brothers.	Shipper has difficulty in getting Baggett to pickup shipments in New Orleans and in getting West to deliver in Mobile. Since Johnson will not make deliveries to Mobile from the East, this carrier is used from New Orleans only to a limited degree. One instance of inadequate service by West was documented.	Marvin, shipper has not inquired to determine if there is an, carrier service, other than that it is using, from New Orleans to Mobile. It transports one half of its TL traffic from New Orleans to Mobile in its private equipment.
2. (4) Gumex Chemical Company, Mobile, Ala. Heavy duty industrial and marine cleaning compounds.	From Mobile to Lake Charles, La. and Fort Arthur, Galveston, Corpus Christi, and Houston, Tex. Between 1/1/64 and 5/11/68, shipper moved 8,097 pounds to Lake Charles, 45,436 pounds to Fort Arthur, and 78,296 pounds to Houston. It ships monthly to Lake Charles, weekly to Fort Arthur, and twice a week to Houston. Occasionally it ships to Baton Rouge, La.	Central Interlining with Ryder to Lake Charles. Red Ball direct to Fort Arthur and Baton Rouge. Bowman and Johnson have been used to the points they serve. Mercury interlines with Central to Galveston and Mercury interlines Alamo to Corpus Christi.	Shipper receives transit time complaints on 25 per-cent of its shipments to Lake Charles. It complains that Mercury has held freight for Houston in its terminal overnight, and that Red Ball is slow in paying claims. While Mercury's service to Houston is generally adequate, shipper believes that Marvin would give better service.	Marvin, Bowman, and Johnson.
3 (12) Thomas Foundaries, Birmingham, Ala. Dredge pumps, parts, rock crusher parts and allied items.	From Birmingham to Pine Bluff and Lake Village, Ark., Baton Rouge and Monroe, La. Crystal Springs and Greenville, Miss.; and Houston, Tex. It has approximately 800 shipments a month with an average weight of 300 pounds moving to the named Arkansas and Mississippi points and to Monroe. Between 50,000 and 100,000 of mostly LTL shipments move monthly to Baton Rouge. Shipper also has five or six shipments a month to the Houston area, weighing between 5,000 and 10,000 pounds each. Shipper has movements of scrap from Houston to Birmingham, and it has a possible movement of scrap from Baton Rouge to Birmingham. It also states that it has movements to other points in Louisiana and Texas and to points in other States that Bowman and Strickland propose to serve. Approximately 20,000 pounds a year moves to Kansas City and Topeka, Kans.	From Birmingham to Baton Rouge, West originates and interlines with Gordons at New Orleans. On shipments to Houston East Texas is utilized. Campbell is used as originating carrier on shipments to Kansas City and Topeka. West is used to points in Mississippi. Occasionally Mercury handles shipper's traffic from Birmingham to Houston.	Shipper requires flat-bed equipment because its pumps, which weigh between 10,000 and 20,000 pounds, are loaded by overhead crane. Also, most of the inbound scrap must be unloaded by overhead crane. It expresses a need for Deaton's proposed second-day service to Baton Rouge and Houston. Shipper has occasionally received complaints on shipments to Kansas City and Topeka.	Deaton, Strickland, and Bowman. Transit time from Birmingham to Baton Rouge is generally 3 days. The service of West to points in Mississippi is described as excellent. Shipper did not know of any single-line service between Birmingham, on the one hand, and on the other, Kansas City and Topeka.
4. (39) Cambrake Shoes, Inc., Uniontown, Ala. Childrens shoes	From Uniontown to Houston, Austin, San Antonio, El Paso, Dallas, and Beaumont, Tex. All traffic moves in LTL lots on a daily basis with the average daily volume being about 2,750 pounds. About six shipments move a day with each weighing between 120 pounds and 8,000 pounds and with the average shipment weighing about 480 pounds.	Baggett originates shipper's traffic. The services of Bell Transfer, Mail Motor Express and the Southern Railway have also been used. T.I.M.E and East Texas handle some of shipper's traffic.	Shipper wants single-line, 2- or 3-day service from Uniontown to Texas. It states that there is no single-line service available from Uniontown to Houston, Dallas, Beaumont, and Fort Worth. Complaints are received about once a week during The busy seasons. On the shipments complained of, transit time to Texas was between 5 and 8 days.	Baggett. Shipper did not investigate to determine whether the delay was on the part of the originating delivering carrier.
5. (35) B.F. Goodrich Company, Akron, Ohio Synthetic rubber, carbon black, and tires.	Inbound to its Tuscaloosa, Ala., plant shipper moves by rail mostly (between two and five percent moves by rail) synthetic rubber from Port Arthur, Tex., and carbon black from Houston, Tex. Between two and three million pounds moves inbound each month. Outbound from Tuscaloosa, shipper moves tires to Houston, Fort Worth, and Dallas, Tex. About one million pounds a month moves to these points. One half of this traffic is handled by truck and the remainder is handled by rail. The former are TL lots weighing between 20,000 and 30,000 pounds. Additionally, shipper has about 15 LTL outbound movements totaling about 25,000 pounds. Shipper also moves about 750,000 pounds of tires a month from Tuscaloosa to Atlanta, Ga. The same amount of tires also moves through Atlanta to points east thereof. About 75 percent of outbound LTL shipments move to the Dallas-Fort Worth area with the remainder moving to Houston. Approximately 55 percent of the TL shipments move to Houston.	Dixie and Alabama Highway Express handle shipper's traffic to Atlanta. The latter also handles traffic which is interlined at Atlanta. Campbell originates shipper's traffic moving to points in Texas and interlines it at Memphis, Tenn. Dixie also originates shipper's traffic and interlines at Memphis. Service Express originates outbound traffic and interlines at Birmingham. Mercury interlines at Birmingham, and delivers shipper's traffic to Houston. Roadway is used on traffic moving into and out of Atlanta.	Inbound, applicant's service would be used on expedited shipments only. No traffic would be diverted from the rail carrier. Shipper maintains a warehouse in Atlanta and it expresses a need for single-line service on tires moving from Tuscaloosa both to this warehouse and to customers located at Atlanta. Dixie has terminated concurrences with a number of carriers which interline at Atlanta. Shipper believes that it would be better to have two or three carriers available.	Baggett. Shipper does not know of any single-line service between Tuscaloosa, on the one hand, and, on the other, Dallas, Fort Worth, and Port Arthur. It acknowledges that Ryder holds single-line authority from Houston to Tuscaloosa but it does not wish to use Ryder because of the service and because this carrier no longer has a terminal at Tuscaloosa. Shipper is satisfied with Roadway's service. It has not used Mail-Roadway through Birmingham outbound.
6. (26) Montgomery, Ala.	See Shipper summary under Georgia heading.			
7. (29) Demetor, Ala.	See Shipper under South Carolina heading.			

[1]The number in the parentheses is the witness number utilized by the examiners.

Summary of evidence of supporting shippers and consignees

(Exhibit No. [illegible])

Shipper, location and commodity	Origin, destination, volume, type and frequency of traffic	Existing services utilized	Reason for shipper's operation	Other transportation suggested and reasons
8. (52) Moore-Handley, Incorporated, Birmingham, Ala. Hardware	Inbound to shipper's store and warehouse at Birmingham during the first 9 months of 1966 shipments moved from New Orleans (12) weighing a total of 46,438 pounds); and Jupiter City, La. (1 weighing 749 pounds); Dallas (12 weighing 1,079), Houston (1 weighing [illegible],456 pounds), and Plano, Tex. (1) weighing 19,940 pounds); Greenville (5 weighing 35,000 pounds), Vicksburg (16 weighing 66,921 pounds), Gulfport (4 weighing 668 pounds), Jackson (7 totaling 1,675 pounds) and Cedars, Miss. (2 weighing 1,951 pounds); Rogers (4 weighing 822 pounds), Harrison (7 weighing 11,795 pounds) and Little Rock, Ark., (6 weighing [illegible],637 pounds); and Kansas City, Kans. (15 weighing 7,532). Shipper also receives inbound traffic from Hattiesburg and Biloxi, Miss.; Alexandria, Bienville, and Harvey, La.; Nashville, Ark.; and Sulphur Springs, Tex. The shipments weigh between 148 pounds and [illegible],375 pounds. Outbound shipments move from Birmingham to, among other points, New Orleans, Franklin, Alexandria, Arondale, and White Castle, La.; Pascagoula, and Vicksburg, Miss., and Dibol, Tex. Outbound shipments weigh an average of between 1,000 and 12,000 pounds each week.	Southern Railway, Foster, Alabama, Highway, Strickland, Bowdon, Campbell, [illegible], Denton, and Texas Eurogon, Verdery, Red River, Transcon, and Eagle. Shipper also has [illegible] at [illegible] warehouses.	Shipper wants single-line service between Birmingham and the points [illegible] from which it receives [illegible] are [illegible] [illegible] inventory [illegible] and [illegible] needed [illegible] [illegible] [illegible]

Summary of evidence of supporting shippers -- continued

ALABAMA -- continued

Shipper, location, commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
... (6)(Con. Diamond Match)	are LTL. Shipper does have some TL movements.		Scheduled. Also shipper's storage facilities are limited. Shipper feels that it needs the services of an additional carrier to give it flexibility.	
... (10) Beatrice Foods Company, Montgomery, Ala. Paint and plastic products	... to Alabama, Georgia, Texas, Louisiana, Mississippi, and Florida. During a 6-month period in 1966, 4,200 pounds were shipped from Atlanta, 1,000 pounds to Mobile, and 1,000 pounds to Montgomery. Shipments to other Texas points consisted of three shipments were LTL, with the average shipment weighing 730 pounds.	West, Cole, AAA Motor Lines and connections are used.	Shipper wants a direct, single-line service. It receives about one transit time complaint a month. Inbound containers are higher susceptible to damage	Baggett. Shipper did not know of any single-line service from Montgomery to points in Texas. It was not aware that Roadway serves from Montgomery to Houston, Dallas, and other Texas points in single-line service
17. (10) Wolverine Tube, Division of Calumet and Hecla Consolidated Copper Company, Decatur, Ala. Copper, brass, and aluminum tubing.	From Decatur to Houston, Dallas, Beaumont, and Fort Worth, Tex. Each week 40,000 pounds move to Houston, 2,000 pounds to Beaumont, and 158,00 pounds collectively to Dallas and Fort Worth. The majority moves in TL weighing approximately 30,000 to 32,000 pounds. Some moves in LTL weighing from 500 to 1,100 pounds each. Shipper planned to expand its Decatur facility and expected an increase of 25 percent in its business. About 20 or 25 percent of its shipment are rail shipments. About two shipments of TL lots move to Houston weekly and between four and six TL shipments move to Dallas weekly. The remainder of the traffic to LTL	Gordons, Ryder, Baggett, Mercury, and the L & N Railway. Also shipper uses its two units of private equipment occasionally on shipments to Texas. Ryder renders single-line service to Houston and Gordons renders single-line service to Dallas and Fort Worth	Shipper prefers single-line service. It has experienced difficulty in obtaining equipment from the authorized carriers, including Baggett. The majority of its shipments must be moved in open-top equipment.	Baggett
18. (7) Hewitt-Robins, Inc., Division of Litton Industries, Birmingham, Ala. Roller chains, gear reducers, sprockets, rubber hose and belting, conveyor rollers, and allied articles.	Outbound from Birmingham to Houston, Beaumont, Texas City, Dallas, Fort Worth, and other Texas points. In April and May of 1966, it shipped 8,000 pounds to Houston, 400 pounds to Beaumont, 300 pounds to Texas City, and 1,800 pounds to Dallas and Fort Worth, Tex. The figures are not representative because it ships to these areas only to supply shortages at its Houston and Dallas warehouses. The shipments are all "rush" LTL averaging about eight a week with each shipment weighing 400 pounds. Inbound, shipper receives at Birmingham emergency shipments from its Dallas and Houston warehouses. The inbound shipments total as much or a little more than the outbound shipments to these points.	Baggett, Mercury, and East Texas.	Transit time is important since the traffic consists of "rush" shipments. Shipper prefers direct, single-line service. The services of Mercury and East Texas have not been consistent. Excluding weekends and holidays, shipper expects second-morning delivery	Baggett
19. (7) Tuscaloosa, Ala	See shipper under Texas heading			
20. (8) Vulcan Metal Products, Birmingham, Ala. Aluminum component for screen, door, and window frames.	From Birmingham to numerous specified points in Arkansas, Missouri, Kansas, Mississippi, Texas, Louisiana, Oklahoma, and Illinois. Each week shipper has 10 movements to points in Arkansas with the average shipment weighing 300 pounds, three or four a week to Missouri with the same weight, three four a week to Kansas weighing the same as above, one or two a week to Mississippi; move shipments to Texas because it has a warehouse at Dallas (in 1965 it moved 120,357 pounds to Dallas and through June 9, 1966 it moved 102,223 pounds), four or five a week to Oklahoma with the same average weight, four or five shipments a week to Chicago, Ill., with the same average weight, about three shipments to Baton Rouge and Shreveport, La. a week, weighing the same average weight as described above.	To Arkansas, East Texas, Campbell, Arias and Red Line are used in single- or joint-line service. Gordons and Campbell are used to Missouri, Ryder to Baton Rouge, East Texas to Shreveport, Campbell to Mississippi, Gordons and Mercury to Texas, and Transcon to Oklahoma. The single-line service of Gordons, Ryder, Baker, and Campbell are used to Chicago.	Shipper prefers single-line service, transit time is important because customers do not maintain large inventories. Shipper complained about (1) a shipment handled by Campbell to Springfield, Mo. on which 12 pieces were mislaid and later delivered, and (2) long transit times namely,(a) one shipment picked up by East Texas on 4/28/66, was not delivered to Shreveport until 5/6/66 (includes a weekend),(b) one are picked up by Campbell, 3/3/66, was not delivered at Kansas City until 3/9/66 (includes a weekend), (c) one shipment handled by Dixie and Red Ball was picked up 7/23/65 and as of 7/25/65 was still on Dixie's dock at Birmingham, and (d) one shipment picked up at Springfield, 6/18/65, was not delivered to Birmingham until 6/29/66 (includes a weekend).	Baggett, Jones, and Bowman. Shipper is aware that single-line service is available to Baton Rouge and to Shreveport, La., and Houston and Beaumont, Tex.
21. (8) Jones Manufacturing Company, Birmingham, Ala., sanitary specialties	From Birmingham to Baton Rouge (2,000 pounds a month), Lake Charles (2,000 pounds a month), Monroe (2,000 pounds a month), New Orleans (7,500 pounds a month), and Shreveport, La. (500 pounds a month), Greenwood (1,000 pounds), Hattiesburg (600 pounds), and Vicksburg, Miss. (800 pounds), and Fort Worth and Houston, Tex. All are LTL. Shipper has six or eight movements a week to New Orleans weighing an average of between 300 pounds and 8,000 pounds. Between 10 and 12 shipments a month move to Mississippi having the same average weight as those to New Orleans. It ships 1,000 pounds a month to Fort Worth and when it ships to Houston it moves 3,000	West handles shipper's Louisiana traffic. Campbell is used to Greenwood West is used to Hattiesburg and Vicksburg and Mercury is used to Fort Worth and Houston. Dixie and Ryder have been used to New Orleans. East Texas is used to Fort Worth.	Shipper wants overnight service from its plant to the Mississippi points and to New Orleans, second-day service to the other Louisiana points and not later than third day service to the Texas points. It complains that West does not render satisfactory transit time and that it has had to trace shipments handled by West several times over the last 2 to 3 years. Shipper's customers purchase only small "fill-in" orders from it and they want quick delivery. It has not been	Bowman and Jones. Shipper has satisfactorily used Bowman's service to points not involved here. It indicates that existing service from Birmingham to Houston is satisfactory. Shipper is aware that from Birmingham to New Orleans it has available the services of Ryder, Campbell, West, and Dixie. It indicated that it would consider using Baggett's recently commenced single-line service from Birmingham to New Orleans.

Summary of evidence of supporting shippers—Cont'd.

ALABAMA—Cont'd.

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Applicant's comments
9. (82)—Con.	pounds. Shipper is principally concerned with traffic to New Orleans.		able to obtain pickup service from Jemco. Shipper introduced [illegible] of the shipments handled for [illegible] were shown in [illegible] New Orleans, and [illegible] to Slidell, Metairie, Houma, La., and to Jackson, Miss. Excluding weekend, three shipments to New Orleans were delivered in 1 day, eight in 2 days, three in 3 days, and one in 6 days.	
20. (83) Southeastern Tool and Die Company, Inc., Birmingham, Ala. Aluminum materials used to produce aluminum window screen frames	From Birmingham to specified points in Missouri, Kansas, Arkansas, Mississippi, Louisiana, Oklahoma, Illinois, and Texas. Approximately 26,000 pounds moves each week to these States. Between 9/13/66 and 6/8/66, shipper had movements to Little Rock, Fort Smith, and Pocahontas, Ark., Kansas City and Springfield, Mo., and Greenwood, Miss. All of the shipments were in LTL lots. Between 20 and 30 shipments move daily into the territory. Bowman and Jones seek to serve. Their average weight would be between 300 and 500 pounds. Weekly, about 1,000 pounds will move to Missouri and Kansas, 6,000 pounds to Arkansas, 1,000 pounds to Mississippi, 2,000 pounds to Louisiana, and 6,000 pounds to Texas.	Orleans and Campbell are used to Missouri and Kansas; Mercury and West to Texas, West and Campbell to Louisiana, Campbell and West to Mississippi, and Gordons, Campbell, and East Texas to Arkansas.	Shipper wants next-day service to New Orleans and to points in Mississippi, and second-day service to other Louisiana points, Arkansas, Texas, and Missouri points, and to Kansas City, Kans. Shipper indicates that it has difficulty with delivery time and tracing a shipment handled by Gordons. It states generally that it has experienced poor delivery service with Campbell and that on a few occasions Campbell missed pickups. Shipper has received an unspecified number of complaints from customers located in the area Jones and Bowman seek to serve. (The carrier or carriers involved are not specified).	Bowman and Jones. Shipper has used Bowman under its present authority and is satisfied with the service. Shipper indicates that West renders good pickup and delivery service. It cannot recall a complaint regarding the service of West. Mercury renders to shipper second-morning service to Houston and Dallas. Other than West and Campbell, shipper is not aware of any single-line service from Birmingham to New Orleans and points in Mississippi (except Dixie to Jackson, Miss. During June 1966 Gordons handled about 30 shipments for Southeastern and none had to be traced.
21. (84) Union Envelope Company, Birmingham, Ala. Envelopes	From Birmingham shipments move to specified points in Arkansas, Texas, Louisiana, Tennessee, Missouri, Mississippi, Kansas, and Oklahoma. During May 1966 shipper had movements to Camden, Jonesboro, Blytheville, and Little Rock, Ark., Memphis, Tenn., Houston, Dallas, and Fort Worth, Tex., Shreveport, Baton Rouge, West Monroe, and New Orleans, La., St. Louis and Springfield, Mo., Oklahoma City and Tulsa, Okla., Wichita, Kans., and Columbus, Jackson, and Greenwood, Miss. Shipper also has movements to Muskogee, Okla., and to and through Chicago, Ill.	West is used to Mississippi points and to New Orleans, La. East Texas is used to points in Arkansas, Texas, Tennessee, and Louisiana. Ryder is used to points in Texas and Louisiana. Gordons is used to points in Missouri and Texas. Transcon is used to Oklahoma, Arkansas, and Tennessee. Campbell is used to Missouri, Arkansas, and Mississippi. West is used to Louisiana and Mississippi. Terminal Transport and Gordons are used to Chicago.	Shipper wants overnight service to points in Mississippi and to New Orleans, second-day service to other Louisiana points; second-morning service to points in Texas, overnight service to Little Rock, and second-morning service to other Arkansas points; overnight service to Memphis, Tenn., and second-day service to involved points in Missouri and Oklahoma. Although Campbell will pick up shipper's traffic in Little Rock, it moves the freight from Birmingham only on Monday, Wednesday, or Friday. Shipper introduced a traffic study of shipments handled by West to New Orleans, Baton Rouge and Jackson in January and February 1966 [illegible] weekends, West's transit time was 2 days on 10 of 16 shipments to New Orleans, on 13 of 17 shipments to Jackson, and on 2 of 3 shipments to Baton Rouge. Four of the remaining shipments to New Orleans were delivered in 3 days.	Bowman and Jones. Shipper satisfactorily uses Bowman to points in the South. It also has found Baggett's service satisfactory and is willing to try this carrier's overnight service to New Orleans.
22. (86) State Farm Insurance Company, Birmingham, Ala., printed material and forms	From Birmingham to between 12 and 15 points in Louisiana on a daily basis. About 12,000 to 15,000 pounds moves each month to points in Mississippi and Louisiana and the average weight of a shipment is from less than 100 pounds up to 300 pounds. Shipper expects a [illegible] percent annual increase in the volume of its traffic. It maintains between 12 and 15 branch officers in Louisiana. More shipments move to New Orleans than any other Louisiana points.	Campbell and Baggett are used outbound. Campbell serves New Orleans [illegible] service.	Shipper wants single-line service. Time in transit is important since the printed material is dated. Shipper introduced a list of shipments from Birmingham to Louisiana points which were handled by Campbell and Red Ball, or interline service (interchange) to Red Ball at either Jackson, Miss., or New Orleans, between 7/26/65 and 12/9/65. The list is not all inclusive. Out of total transit times of between 1 and 4 days Red Ball's expedited time was between 1 and 3 days. Weekends were included.	Red Ball. Shipper believes that has Campbell can originate shipments at Birmingham and deliver them to New Orleans for interlining. Its support is limited to movements from Birmingham to Louisiana.
23. (105) Greif Bros. Cooperage Corp., Cullman, Ala. Steel products	From Cullman to Houston. Shipments move every 10 days in mostly TL lots. Shipper's volume of LTL movements is increasing.	Mercury originates the traffic and interline with at Birmingham, Ala., with Mercury.	Shipper wants single-line second-day service to Houston.	Mercury. Shipper has not investigated whether it has single-line service from Cullman to Houston.
24. (106) Planet Southern	From Birmingham to Houston. Shipper has periodic movements. The LTL traffic varies between 1,000 and	Superior Trucking Company, Ryder, Baggett, Red Ball,	Shipper requires open-top equipment since the articles are loaded by overhead	Mercury.

ALABAMA—continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
24. (100)—Continuation. Birmingham, Ala. Automotive conveyors and trucks and part thereof. Inbound—reducers, castings, motors, and other materials used in conveyors and trusses.	20,000 pounds depending on the product [illegible] Birmingham inbound traffic from unspecified origins.	and Eagle Supervisor, a heavy hauler. Is used to Houston along with Ryder. Baggett interlining with Red Ball Tex. Best used.	crane. It has used flat-bed equipment but experiences flat-down problems. On one occasion Ryder could not provide open-top equipment although given 2 days' notice. Transit time is important because most jobs which shipper supplies have penalty clauses for delays.	
25. (107) Birmingham Spring Service, Birmingham, Ala. Automobile parts.	From Birmingham shipper has about two LTL movements a week to Baton Rouge, La. The average shipment weighs 400 pounds.	Ryder and Bus service.	Shipper wants second-morning service.	Deaton.
26. (108) Hurricane Steel Industries, Birmingham, Ala. Steel fencing material	Shipper receives between 10,000 and 12,000 pounds a month from Houston in LTL lots.	Campbell delivers after interlining with Harris or Red Ball from Houston. Shipper uses private carriage on TL movements.	Shipper prefers single-line service. It stocks only residential fencing from Houston. If recalls one sale it lost because it could not deliver on the date promised due to transportation problems. The proposed 2- or 3-day service from Houston would be beneficial to its business.	Deaton. Shipper has not investigated the available single-line service from Houston to Birmingham. It became aware of Ryder's single-line service between these points immediately prior to the hearing herein and expressed a willingness to try the service.
27. (109) National Cabinet Company, Springville, Ala. Metal cabinets	From Springville, shipper moves 1,900 pounds (4 shipments) a week to Houston, 2,000 pounds (4 shipments a week) to Dallas, and 1,200 pounds (4 shipments a week) to Beaumont. Shipper also has movements to San Antonio, Waco, and Fort Worth, Tex.	Baggett originates shipper's traffic. Shipper uses private carriage on TL lots.	Shipper wants direct, single-line service. It has experienced some loss and damaged with the existing interline service. Three-day service to Houston, Dallas, San Antonio, and Beaumont would be acceptable.	Baggett. Shipper would continue to use its own equipment if the application is granted.
28. (120) Northington Air Conditioning Company, Decatur, Ala. Air conditioning equipment	From Decatur shipper has a monthly tonnage of 100,000 pounds to Dallas 50,000 pounds to Fort Worth, 125,000 pounds to Houston, and 225,000 pounds to points in California, Oregon, and Hawaii. About 90 percent of this tonnage moves in LTL lots weighing between 2,500 and 3,000 pounds. The TL shipments weigh about 45,000 pounds.	Baggett, Gordons, Ryder, and A-OK. Baggett originates shipper's traffic and interlines it mostly at Birmingham. Mercury delivers it from Birmingham to Houston. Gordons originates shipments moving to Fort Worth and Dallas and interlines at Memphis, Tenn. A-OK is used to Birmingham on shipments bound for the West Coast.	Most of shipper's products are manufactured for a specified job and often a penalty clause for delays is involved so time in transit is important to shipper. Shipper wants third-day service to point in Texas. Some of its units are not crated and excessive handling increases the chance of damage. Single-line service is preferred because it facilitates tracing.	Baggett. Shipper is generally satisfied with the service it receives from Gordons.
29. (121) Adams-Mercury-Cushman Agency, Inc., doing business as Honda Central, Birmingham, Ala. Motorcycle parts and accessories.	From Houston, shipper receives at Birmingham about 2,000 pounds a month of motorcycle parts with the average shipment weighing about 400 pounds.	East Texas and Mercury deliver shipper's traffic.	Shipper indicates that the existing service is slow. It wants second-day service from Houston.	Baggett. Shipper has never complained to East Texas or Mercury about their service. It conceded that it did not know what transit time it was receiving from East Texas and Mercury.
30. (123) Diamond B Western Shop, Jackson's Gap, Ala. Cowboy boots, hats, horse trailers and western clothing.	Inbound from Dallas 10,000 pounds will move a year and from Fort Worth between 30,000 and 40,000 pounds a year. The average weight of the shipments is 500 pounds. Shipper also has movements from Houston, and Laredo, Tex., to Jackson's Gap. About 20% pounds a month moves from Houston.	East Texas and Mercury interlining with Baggett, the delivering carrier, from Houston. Mercury originates the shipments and interlines with Baggett at Birmingham.	Shipper wants 2- or 3-day service. It used Ryder once but the carrier did not deliver to shipper's place of business and shipper had to go 2.5 miles to pick up the shipment.	Baggett. North Alabama Express is available as a delivering carrier. Shipper, at the hearing, became aware that Ryder, holds single-line authority from the involved Texas points to Jackson's Gap.
31. (124) Simon and Mogliner, Birmingham, Ala. Clothing.	From Birmingham to specified points in Texas, Louisiana, and Mississippi. A [illegible] or portion of the 360,000 pounds shipper moves annually to points in the west moves to points in the three above-described States. The average weight of each shipment is about 120 pounds. About 134,000 pounds collectively moves annually to points in Louisiana and Mississippi. Shipper also has movements to Fort Smith and Fayetteville, Ark.	Ryder is used to Mississippi and to same points in Louisiana. Cole is used to New Orleans, and East Texas, Mercury, and Transcon to Texas.	Shipper wants the services of carriers capable of handling shipments to the smaller cities. It has limited dock space and therefore wants to use a carrier with broad authority.	Red Ball, Jones, and Bowman. Shipper uses Bowman and it indicates the service is satisfactory. Mercury's service to points in Texas such as Houston, Dallas, Beaumont, and Fort Worth is satisfactory. Although Campbell has rendered shipper satisfactory service, it has not used this carrier in single-line service from Birmingham to Baton Rouge. And, while shipper was aware that it could use Mercury to Mobile, Ala. and Red Ball to points beyond, it indicated that it prefers single-line service.
32. (126) Plantation Patterns, Inc., Birmingham, Ala. Wrought iron	From Birmingham to specified points in Texas, Louisiana, Arkansas, Mississippi, Missouri, and Colorado. During May 1966, shippers had 18 movements, totaling 46,354 pounds from Birmingham to points in the above-described States. The average weight of	Mercury, Gordons, Campbell, Deaton, and West. The single-line services of Mercury and Gordons are used to Texas points. Deaton,	Shipper has had difficulty in obtaining pickup service from Campbell and West. Out of shipper's Baton Rouge customers complains about the existing service. The	Red Ball, Strickland, Deaton, Jones and Bowman. Shipper has satisfactorily used Bowman's service. It indicates that Mercury has rendered a satisfactory service to points in Texas. Shipper was not

Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Disposition supported and remarks
32. (150)--Con. Furniture.	each shipment is between 100 and 1,500 pounds. The average shipment weighs about 300 pounds. Shippers expects its business to increase about 25 percent each year.	Campbell, and West are used to points in Louisiana. Gordons is used to Arkansas, and Campbell, Deaton, and West are used to Mississippi.	requested shipper not to use Hwy and another requested that Ryder not be used. Shipper prefers single-line service because it involves less handling and better transit times.	aware that Ryder serves Tenn. Ky. and Miss. Shipper prefers single line service to Miss. for similar with the service of East Texas.
33. (152) Beloco Distributors Birmingham, Ala. Carpet and related commodities.	From Birmingham shipper has about two LTL movements a week to Baton Rouge, La. The shipments weigh from a minimum to 2,000 pounds.	Campbell and Ryder are used to Baton Rouge.	Shipper wants second-morning service to Baton Rouge. Transit time is important because shipper's dealers do not have any stock. Shipper is not satisfied with the transit time being rendered by Campbell and no longer uses Ryder because the customer directs that Campbell be used. Single-line service is preferred.	Deaton. Shipper uses Deaton from and to points in Mississippi.
34. (153) Plastic Clad Corporation, Birmingham, Ala. Plastic counter tops and partitions in cartons.	From Birmingham to points in Texas including Beaumont, Houston, Orange, and Texas City. The shipments weigh between 50 and 600 pounds. Shipper has two movements a month to Baton Rouge.	To Houston, Mercury and Ryder have been used.	Shipper prefers single-line service. Transit time is important because the involved commodities are utilized in service stations, the construction of which is scheduled. Shipper's loading facilities are limited to two doors and it wants to limit the number of carriers which serve it.	Deaton. Shipper uses Deaton's service to Mississippi
35. (157) General American Transportation Co., Birmingham, Ala. Tanks, tank materials and parts and iron and steel.	From Birmingham to points in Mississippi and southern Arkansas. At the time of the hearing shipper did not have traffic moving but expected shipments to commence within 6 months of the hearing.	Shipper proposes to use both specialized carriers and regular route carriers.		Strickland. Shipper was not aware of any single-line service from Birmingham to the destination territory. It indicated that there are carriers capable of handling its traffic to same Mississippi points, and conceded that inasmuch as it had not had an opportunity to use the existing service it could not determine whether it was adequate. Patrick and Shipper did not know exactly how many carriers operate daily between Atlanta and Birmingham. Shipper did not know that Transcon could render single-line service from California to Birmingham. It indicated that, if Mercury interlining with another carrier at Dallas could render to or 2-day service on shipments from California, its needs would be met. Shipper did not know at what time of day the Atlanta consignor requests pickup service on the cited instance regarding United. Baggett
36. (158) James W. Clary Co., Birmingham, Ala. Electronic equipment and supplies, batteries, and television picture tubes.	Inbound from Atlanta to Birmingham shipper receives an average of 100 to 200 pounds a week. It also receives shipments from Los Angeles and San Francisco, Calif.	United and Georgia Highway are used from Atlanta.	Shipper wants 5-or 6-day service from California. If the application is granted it would route the California shipments through Dallas. Overnight service is required from Atlanta. United picked up shipments at Atlanta a day late a few weeks before the hearing. Shipper uses United's service frequently, however, and indicates that this carrier renders overnight service and it is rare that it does not make a timely pickup. Shipper wants direct, single-line service from Birmingham to Houston and Dallas. Inasmuch as the involved commodities are utilized in scheduled construction projects, time in transit is important. Shipper expresses a need for second-morning service to Dallas and Houston. It indicates generally that the services of Transcon and Ryder are not satisfactory. The service of Mercury and East Texas are also described as unsatisfactory. Shipper indicates that in the 6 months before the hearing it had difficulty on two occasions in obtaining pickup service from Mercury. "Is Dallas representative on one occasion in the 6 months before the hearing had to pick up a shipment at East Texas' dock in Dallas.	
37. (159) Builders Manufacturers Company, Birmingham, Ala. Metal doors and metal door frames.	From Birmingham, shipper moves 30,000 pounds a month to the Houston area and 60,000 pounds a month to Dallas. About 65 percent of the shipments to Houston move to Houston proper with the remainder moving to points located within 60 miles of Houston. About 75 percent of the Dallas area shipments move to Dallas proper with the remainder moving through Dallas to points within 200 miles of Dallas. The average shipment weighs about 4,000 pounds and it moves about twice a week to each of the two points.	Mercury and East Texas. Transcon and Ryder were used. Connecting carriers handle the shipments from Dallas and Houston to their surrounding areas.	Shipper wants direct, single-line service from Birmingham to Houston and Dallas. Inasmuch as the involved commodities are utilized in scheduled construction projects, time in transit is important. Shipper expresses a need for second-morning service to Dallas and Houston. It indicates generally that the services of Transcon and Ryder are not satisfactory. The service of Mercury and East Texas are also described as unsatisfactory. Shipper indicates that in the 6 months before the hearing it had difficulty on two occasions in obtaining pickup service from Mercury. "Is Dallas representative on one occasion in the 6 months before the Hearing had to pick up a shipment at East Texas' dock in Dallas.	
38. (160) Ace Neon Sign Company, Birmingham, Ala. Signs and sign materials.	Inbound to Birmingham, shipper receives between three and five shipments of sign materials a year, all of which are ordered on an emergency basis from Houston and Atlanta.	Baggett is used from Atlanta and Mercury from Houston	Shipper wants overnight service from Atlanta and second-morning service from Houston. It introduced a transit time study on six shipments (which embraces all of the shipments it received during this period), delivered between 2/10/64, and 12/22/65. Baggett handled two of the shipments from Atlanta and Mercury handled the remainder, which went from Houston. Baggett picked up one shipment on a Friday and delivered it on the following	Very clear

Summary of evidence of supporting shippers—continued.

Alabama—continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
89. (1611-I.C.C.			Monday. The delivery date on the other shipments handled by Baggett was disputed. Of the shipments handled by Mercury (including weekends), two were delivered in 5 days, one in 7 days and one in 9 days.	
90. (1611) R.D. Cobb Company, Mount, Ala. Toys.	From Mount during 1965, shipper moved by Pop-size motor carrier 2,897 pounds (41 LTL shipments) to Dallas; 6,869 pounds (21 LTL shipments) to Fort Worth, 26,374 pounds (64 LTL shipments) to Houston; and 113,885 pounds (177 LTL shipments) to all other Texas points, which shipments move through Houston or Dallas. Shipper also have movements to such points as Beaumont, Port Arthur, Paris, Tyler, and Johnson City, Tex. Almost all of the involved traffic is LTL weighing from 100 pounds to 5,000 pounds. About 80 percent of its traffic moves in the last 6 months of the year.	C.R.I.O. Railroad, Baggett, Cole and Hall interlining with other carriers at Birmingham and Mobile, Ala. and Memphis, Tenn. Baggett originates most of shipper's traffic and the route is decided by the carrier. Hall, Tennessee, Ryder and Mercury have been used on an interline basis. Cardens interlining with A-CF.	Shipper indicates that it does not have direct, single-line service to any Texas point. It is not satisfied with the existing service because of poor transit times and tracing problems. Shipper would be satisfied with 4-day service to the destination territory.	Baggett.
91. (1611) Southern Multiple Farm Union Springs, Ala. Cardens paper.	Inbound from Dallas to Union Springs. All shipments are rush. At the time of the hearing shipper had received one shipment from Dallas. Its supplier has been unable to furnish all carbon paper needed from Decatur, Ga. and began to supply shipper from its Dallas plant. Shipper is expanding and expects to receive about 20,000 pounds a year from Dallas. The traffic would be mostly TL lots.		Shipper wants a direct single-line service. It cannot maintain sufficient stock for large orders and it is penalized on government contracts if it does not meet the completion date on transit time is important.	Baggett. Shipper has used applicant's service and describes it as satisfactory. It indicates that it would have no objection to using East Texas from Dallas to Birmingham and Baggett to Union Springs.
92. (1611) Sentry Company, Montgomery, Ala. Plastic cups and film bags, primarily household polystyrene containers for food storage and display racks.	From Montgomery during May 1965 shipper had movements of 113,811 pounds to Dallas, Tex.; 31,410 pounds to Houston, Tex.; 8,120 pounds to Fort Worth, Tex.; 398 pounds to Beaumont, Tex.; 434 pounds to Texas City, Tex.; and 43,874 pounds to other Texas points. The LTL shipments weigh between 150 and 5,000 pounds and TL shipments weigh 40,000 pounds. During other months this volume doubles. Shipper is expanding its facility and expects the volume of traffic it ships to Texas to increase. All of shipper's traffic to points in Texas moved to or through Dallas and Houston. Of the above-described tonnage to Dallas, 90,000 pounds was handled in private carriage.	Baggett interlining with Tennessee. Shipper uses private carriage, East Texas, AAA, and Cardens and also used. Cardens and Baggett originate shipper's traffic and interline it at Birmingham.	Shipper wants a direct single line service. It instituted private carriage accordingly because it was unable to obtain the type of delivery service it wanted from motor common carriers. If the application is granted and Baggett rendered the proposed service private carriage will no longer be used to Texas and shipper will close its Dallas distribution facility. Shipper allows a minimum of 5 days for delivery to Houston, Dallas, and Fort Worth. It wants second-morning service to points in the destination territory. Complaints have been received by shipper regarding the existing service.	Baggett. Shipper is aware that it has a choice of two-line carriers from Montgomery to the Texas destinations.
93. (173) AAA Motors, Inc., Montgomery, Ala.	AAA holds generality commodities authority and serves points in southeast Alabama. Its major gateways for interlining are Montgomery and Birmingham, Ala. AAA supports Johnson on traffic moving between the points it serves in southeast Alabama, including Birmingham and Montgomery, on the one hand, and, on the other, Houston, Tex. and points beyond. AAA wants to interline with Johnson at Montgomery. Annually AAA handles about 850,000 pounds of LTL and TL traffic between Houston and points beyond on the one hand, and, on the other, the area it serves in Alabama.	It interlines with East Texas, Cardens, Ryder, Mercury, and Transcon at Birmingham.	AAA has received complaints from its Alabama shippers that the existing interline service renders slow transit times. It expresses a need for the proposed second-morning service from Montgomery to Houston. Shipper introduced a transit time study of some of the shipments it interlined in November 1965 from Houston. The shipments were interlined at Birmingham, except two which were interlined at Montgomery with Hunt. Including those two shipments and excluding weekends about 65 percent of the shipments were delivered to Birmingham in 1 or more days and about 35 percent were delivered in 2 days. Those shipments were interlined with Mercury, East Texas, Ryder, Morris, Strickland, and Herman	Johnson. Johnson serves Montgomery and like AAA maintains a terminal at this point. AAA satisfactorily interlines with Johnson to points the latter carrier serves. AAA did not include in its exhibit all of the shipments billed by Mercury at Houston. In November 1965 it was the general practice for Mercury to call AAA when it had a shipment for the latter to pickup at Mercury's dock. Although it dates its bill when it picks up the shipment at Mercury's dock, AAA denied that it delayed in making the pickups. It was surprised to learn that it was requested by East Texas on July 21, 1965, to make a pickup and had not made the pickup on that day. AAA was not sure whether East Texas has complained to AAA about not making a pickup the day it was called. AAA also dates its bill on the day it makes the pickup from East Texas. AAA could not cite a specific complaint on shipments interlined to it by Mercury in the first 11 months of 1965. And Hall. While shipper indicates that it has had complaints regarding service, it was unable to name any of the points involved. Campbell's service is described as satisfactory.
94. (189) Birmingham Stove Stove & Range Company Birmingham, Ala. Cast iron hardware, gas heaters, cast iron heaters and ranges, cast iron, cast aluminum, and steel furniture.	From Birmingham to points in Louisiana and Texas. Shipper has several movements a week to points in East Texas and Louisiana. Most of its shipments are LTL and weigh up to several thousand pounds. Between 7/8/65 and 11/28/65, shipper had movements from Birmingham to Pamplin, Kirbyville, Bronson, San Augustine, Carthage, Jasper, Longview, Jasper County and LaPale Tex.; and Tallulah, Springfield, Bruner Bridge, Harrisville, Jonesboro, Monroe, Oak Grove, Farmerville, Bogalusa,	East Texas, Mercury, Ryder, Coles, and Southern Railroad are used as origin carriers and Hall is used as a delivering carrier. Campbell is used to Shreveport, Minn. and to Baton Rouge. Hunt is used to Jonesboro and Ryder is used in single-line service to some Louisiana points.	Shipper expresses a need for the proposed 3-day service excluding weekends and holidays to points in Louisiana and Texas. It believes that Red Ball will render better single-line service than the joint-line service it receives because it feels that Red Ball will give preference to single-line shipments. Shipper is not satisfied with the existing joint-line service. It prefers single-line service. A transit time study which does not reflect all of the Louisiana and Texas traf-	

Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
...3. (192)--Con	Donaldsville, Napoleonville, Swarts, Denham Springs, Baton Rouge, Bastrop, Alexandria, Colfax, Bossier City, Florien, Leesville, Pantin, Jena, Winnsboro, Gonzales, Coushatta, Rumble, Homer, and Berwick, La. Shipper is also interested in service to the smaller communities in Arkansas. It ships to between 400 and 500 dealers in Louisiana and East Texas.		fic during the study period was introduced. The shipments moved to points in Texas, Louisiana, Mississippi, and Arkansas. Shipper was not satisfied with the transit times rendered by either the originating carriers or by the delivering carrier, Red Ball.	
40. (192) The Kent Corporation, Birmingham, Ala. Steel shelving and conveyor-type check-out counters and parts.	From Birmingham about one or two LTL shipments a week move to Houston, Tex. The shipments weigh an average of about 1,000 pounds.	Mercury .	Transit time is important because shipper's distributors do not maintain inventories. Shipper has had complaints from its Houston distributor regarding the transit time Mercury is rendering. It wants 3- or 4-day service to Houston.	Boston. Twenty-five percent of shipper's traffic is routed by customers. Shipper uses Boston to Miami, Fla. It could not recall the date of the last complaint it received regarding the service of Mercury.
45. (193) B. Hoe and Company, Birmingham, Ala. Saws, steel, hardware, and machine knives	Inbound to Birmingham shipments, weighing about 400 pounds are received every 2weeks from Baton Rouge, La., and Beaumont and Houston, Tex. Outbound from Birmingham to Baton Rouge, Beaumont and Houston. Most of the inbound traffic consists of saws to be repaired. Outbound shipments of saw commodities move up to four and five times a week.	East Texas, Mercury, and Dixie. East Texas is used to points in Texas and Dixie is used to Baton Rouge.	Transit time is important because until a damage saw is repaired or replaced shippers' customer may have to close its mill. Shipper has received complaints regarding Dixie's service. Shipper expresses a need for 3- or 4-day service to Baton Rouge, Beaumont, and Houston.	Boston. When a customer sends a saw to Birmingham for repairs the customer does the routing. Also about 10 percent of the time the customer selects the carrier to be used when the repaired saw is shipped from Birmingham. Boston is used satisfactorily by shipper to Mississippi. Shipper did not know of any single-line service from Birmingham to Beaumont and Houston other than East Texas and Mercury. It does not believe that Boston holds authority to transport its commodities to Baton Rouge.
46. (195) Allied Fence Co. of Alabama, Birmingham, Ala. Fence and fence fittings	Inbound to Birmingham from Houston Tex. between 5 and 10 shipments are received a week from Houston, depending on the season of the year. The shipments weigh between 300 and 3,000 pounds. Shipper, in the first 5 months of 1966, did more business than it did in all of 1965.	Mercury, Rydar, and East Texas interline ing with Gardens at Memphis Tenn. Brasswell interlining with Cole is used two or three times a week. Red Ball interlining with Gardens at Memphis is also used.	Transit time is important because shipper does not maintain a full inventory. It wants 2-day service to Birmingham. On a shipment in 1965 Rydar held the movement in Chattanooga for 3 or 4 days. Shipper had to pick it up in Chattanooga itself. About 2 months before the hearing Cole delivered a damaged shipment. Although the carrier had a representative examine the shipment at the time of the hearing it had not settled the claim.	Boston. Shipper satisfactorily uses Boston's service to the points it serves. It indicates that it was not aware that East Texas had single-line service from Houston to Birmingham. With the interline service of Red Ball and Gardens, shipper indicates that it receives 2-day service.
47. (197) Reliance Panelyte, Inc., Kalamazoo, Mich. Laminated plastic	From shipper's Birmingham warehouse daily LTL shipments are made to Baton Rouge, La. Shipper expected to serve the Texas points of Beaumont, Houston, and Orange from Birmingham after 9/1/66. The average shipment weighs between 400 and 800 pounds. Shipper experienced a seven percent increase in business in 1966 over the same period in 1965. It has two or three movements a week to Baton Rouge. The above-described Texas points were served from shipper's Dallas facility about twice a week, with the shipments weighing between 700 and 1,000 pounds. After 9/1/66, shipper expected to close its Dallas facility and serve these points from Birmingham. See shipper under S.C. heading	Rydar, Campbell, and Viking are used to Baton Rouge.	Transit time is important because shipper's customers do not maintain inventories. Shipper wants third-morning service on LTL shipments to Baton Rouge and consistent fourth-morning service to Texas. Single-line service is preferred. Shipper expresses dissatisfied with the existing service to Baton Rouge but for some unspecified reason it has terminated its use of Campbell.	Boston. Shipper has not investigated the existing service from Birmingham to the named Texas points.
48. (207) Mobile, Ala.				
49. (208) Stone Container Corporation, Mobile, Ala. Paperboard	From Mobile to Houston, Dallas, Fort Worth, and Mineral Wells, Tex. Approximately 1.5 million pounds moves to these points each month. The traffic moves in TL lots of about 45,000 pounds. Shipper expects this traffic to increase by 2C percent each year. In April 1966 shipper moved 509,470 pounds to Houston, 414,120 pounds to Dallas, 173,810 pounds to Fort Worth, and 220,410 pounds to Mineral Wells.	Private carriage, Mercury, West and Johnson.	Shipper uses private carriage to Dallas and Fort Worth because it is unable to obtain the type of service it desires. It wants to reduce or terminate private carriage. Single-line service is preferred. Shipper expresses a need for Boston's proposed second-day service from Mobile to Dallas and Fort Worth and for both carriers' proposed overnight service to Houston. Shipper requested overnight service on two TL shipments in February and April 1966 from Mercury but Mercury offered between third- and fifth-morning delivery. Red Ball has declined to handle traffic to Houston because of the circuity.	Boston and Johnson. Shipper uses applicants' service and has found them satisfactory. It has not used Red Ball from Mobile to Dallas and it was not aware that Red Ball and Merchants have terminals in Dallas and interchange with each other. Shipper indicates that it would use these services if the carriers showed an interest. Mineral Wells traffic, under the proposals, would be interlined at Dallas with Merchants.

Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
50. (292) Newton Brothers Lumber Company, Tuscaloosa, Ala. Wooden pallets	All involved outbound traffic from Tuscaloosa is TL shipments to customers at Houston. During June and July 1966 about 660,000 pounds moved by rail to Houston, and approximately 160,000 pounds moved in shippers' leased equipment.	Leased trucks and rail.	Shipper expected increased business and desires to give up private carriage. One of the Houston customers has requested more truck deliveries in place of rail deliveries. Transit time is important because shipper's customers do not place orders for pallets until they need them.	Baggett. If the application is granted shipper would tender all of Houston traffic to Baggett.
51. (295) Fabrics, Inc., Montgomery, Ala. Bedding items; pillows, pads, and mattresses	From Montgomery to Dallas, Tex. and other points in Texas.	Roadway's direct service. Joint-line service of A-OK and A.A.A. and Baggett from Birmingham.	Wants 2-day or third-morning service. Shipper no longer uses Roadway due to pickup delays.	Baggett. Shipper assumes single-line service will be quicker.
52. (340) Standard Brands, Inc., Birmingham Ala. Grocery products	From Birmingham shipper has LTL movements to Vicksburg and Natchez, Miss., and Winnsboro, Delhi, Shreveport, Baton Rouge, Bayville, Alexandria, Pleasantville and Oak Grove, La. During March 1966 shipper had eight movements to Vicksburg weighing 5,215 pounds. Shipments to Winnsboro will average between 2,000 and 4,000 pounds and the average weight of each shipment is about 600 pounds.	Campbell, West, Cole, and Ryder originate shipper's traffic. Shipments to Mississippi and Louisiana points are not interchanged with Red Ball.	Transit time is important because shipper's customers maintain limited inventories. It prefers single-line service to avoid inconsistencies in transit times.	Red Ball.
53. (344) The Cornelius Company, Anoka, Minn. Vending machines	From shipper's Scottsboro, Ala. plant to points in the Southwest. The shipments are LTL.	Realine Exp. to Birmingham, and then Strickland. Ryder is used as an origin carrier.	Shipper uses a three-line haul to 19 destinations in Texas. If applicant were granted the authority, shipper's traffic would be handled by two lines. Other points in Arkansas and Louisiana, now served in two-line hauls will be served direct.	Strickland.
54. (344) Langenbeck, Inc., New Orleans, La. Cartons	From supplier's warehouse at Birmingham to points in Louisiana, Arkansas, and Texas. Between three and four LTL and TL shipments move a month.	Morris, Ryder, and Deaton	Joint-line service is described as inadequate. Shipper wants 2-day service.	Deaton.
55. (551) Dayton Sure-Grip & Shore Co., Birmingham, Ala. Wall tiles, concrete reinforcement, structural inserts, building anchors.	From Birmingham to points in Alabama, Arkansas, Tennessee, Louisiana, Texas, Mississippi, Missouri, and Florida. Shipments range between 24 and 13,129 pounds.	Gardens, Ryder, Mercury, East Texas, A-OK, West, Cole, Campbell, Greyhound, Dixie, Deaton, AAA, Baggett, Howard Hall, Trailways, and Ross Healey.	Shipper wants overnight service to Little Rock and second-morning service to Dallas and Houston. It must now allow between 2 and 3 days load time for delivery to Dallas and Houston, Tex. Little Rock, Ark., and New Orleans, La.	Bowman and Jones. Shipper cited specific instances of inadequate service on the part of Campbell.
56. (553) Miller Wire Works, Inc., Birmingham, Ala. Wire products	From its plants at Birmingham and Houston to points in Mississippi, Louisiana, Georgia, Arkansas, Tennessee, and Texas. Also from Chicago and Joliet, Ill., to Birmingham and Houston, plant sites. Outbound shipments range between 500 and 600 pounds averaging about 200 shipments a month. Inbound-shipments from Chicago move once or twice a month and average between 25,000 and 40,000 pounds. From Joliet shipments are received every 2 or 3 months averaging between 200 and 300 pounds.	Campbell, West, Ryder, Mercury, Gardens, and East Texas.	Shipper wants overnight service to points in Mississippi and Louisiana; second-day service to Arkansas, and third-day service to points in Texas. Average elapsed times from Birmingham to New Orleans is 4 days; from Birmingham to Baton Rouge 6 days; from Birmingham to Memphis, Tenn., 2.5 days, and from Birmingham to Shreveport, La. 3 days.	Bowman, Johnson, Strickland, and James. Transit time does not include all shipments which moved during the period in question.
57. (563) Texas Originals, Inc., Montgomery, Ala. Metal chairs	From Montgomery, to Fort Worth, Dallas, and Houston, Tex. During a 4-month period company shipped 1,590 pounds to Fort Worth, 560 pounds to Dallas, 338 pounds to Houston, and 4,073 pounds to points beyond Texas for a total of 6,461 pounds with shipments weighing between 100 pounds and 2,000 pounds.	Baggett, West, Red Ball, Campbell, Copperstate, and Roadway.	Shipper needs faster transit time. Single-line service to Dallas would allow company to connect to some points it cannot now reach.	Baggett.
58. (566) Continental Gin Company, Prattville, Ala. Cotton gin machinery and related parts	From Prattville to Dallas Tex. About 250,000 pounds moves annually, with shipments ranging between 56 and 3,000 pounds.	Baggett, Mercury, Transcon, and Private carriage.	Joint-line service inadequate because too many interchanges have caused delays in delivery.	Baggett. The involved traffic is seasonal.

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
59. (558) Steiner-Lederman Co., Montgomery, Ala. Clothing	From Montgomery to points in Texas. Approximately 130,000 pounds moves annually. Shipments average 350 pounds each.	Roadway, West, and Red Ball.	Has experienced delays in pick-ups. Wants proposed 2-day single-line service, which would allow company to interchange with 3-days delivery time to many Texas points.	Baggett.
60. (590) Henry L. Beckman Flooring Co., Inc., Birmingham, Ala. Floor tile	From Houston, Tex., to Birmingham. Receives between 20 and 25 TL shipments a year, averaging between 30,000 and 35,000 pounds each.	Ryder, Mercury, and East Texas	Time in transit is important because company cannot stock tile in its warehouse and when it receives an order delivery must be made in one or two days. Also shipper feels an additional carrier available as competition would help the existing three carriers being used at present.	Deaton.
61. (592) Lawler Machine & Foundry Company, Birmingham, Ala. Castings	From Birmingham to Baton Rouge, La., and Houston, Tex. About 70 tons moves annually. Shipments range between 2,000 and 3,000 pounds each.	Ryder and Mercury.	Wants additional service available. Deaton would give 1-day faster service. Wants faster pickup service.	Deaton and Bowman.
62. (617) Builders Manufacturing Co., Birmingham, Ala. Steel doors and frames	From Birmingham to points in Tennessee, Mississippi, Arkansas, Missouri, Kansas, Louisiana, Texas, Illinois, and Oklahoma. Monthly shipments range between 25 and 29,000 pounds between 1/12/66, and 10/25/66, to States not listed below: To Illinois about 3,000 pounds moves daily; to Oklahoma between 2,000 and 5,000 pounds twice a month; to Arkansas one shipment a week averaging between 2,000 and 3,000 pounds; and to Missouri between 1,000 and 3,000 pounds moves daily.	Campbell, Ryder, Deaton, East Texas, and Mercury.	Existing services inadequate. Wants next-day service to points east of Little Rock, Ark., and second-day service to points beyond.	Bowman and Jones. Shipper states that it has single-line service to many areas, but is using joint-line service by carriers giving a more reliable service.
63. (634) Bechik Products Corp., St. Paul, Minn. Tapes	From the facility of shipper's subsidiary at Centre, Ala., to Houston, Dallas, and Fort Worth, Tex. About 1,800 pounds, 900 pounds, and 4,000 pounds moves weekly to the respective cities. Company ships to approximately 17 or 18 other points in Texas that are off-route points and weekly shipments would be about 3,000 pounds.	Baggett, Mercury, Cherokee, and Roadway.	Joint-line service inadequate. Shipper wants single-line service for better transit time. Has experienced difficulty in getting pickups on time.	Baggett.
64. (637) Wolverine Tube Division, Birmingham, Ala. Copper tubing	From Birmingham, to points in Mississippi, Arkansas, Louisiana, Tennessee, and Florida. During a 3.5 month period in 1966, approximately 20,000 pounds moved to points in Arkansas, about 30,000 pounds to Mississippi points, about 6,500 pounds to Louisiana points, and about 10,490 pounds to Memphis, Tenn. No specific figures were given for Florida points, but 2.4 million pounds moved collectively to the named destination States during a 9-month period 1966 inclusive of the above period.	Campbell, Gordons, East Texas, Deaton, Ryder, West, and Mercury.	Shipper wants second-day service to points in Arkansas, and overnight service to other destination points. Average elapsed time to Mississippi points is now 4 days, to Louisiana points 7 days, to Tennessee points, to Arkansas 3.1 days (Florida figures not available.) Elapsed time includes weekends. Shipper is not satisfied with the service of Ryder.	Bowman and Jones. Transit study includes all shipments during period covered.
65. (650) Southeastern Products Corp., Pelham, Ala. Mechanical packing and gaskets.	From Pelham, to Houston, and return. Outbound, company ships approximately 2,500 pounds about eight times a year to one Houston customer; about 2,000 pounds monthly to another customer, and about 1,500 pounds monthly to a third customer. Inbound, company receives about 8,600 from Houston annually.	East Texas, A-CM, and Red Ball.	Prefers single-line service and wants faster transit time.	Deaton and Baggett.
66. (651) McQueen Foundries, Inc., Birmingham, (Irondale) Ala. Iron castings	From Irondale to Baton Rouge, La; Houston and Fort Worth, Tex.; Greenville, Miss., and Shreveport, La. Two shipments monthly at about 2,000 pounds a shipment to each point. No tonnage figures given for Fort Worth, Greenville, and Shreveport.	Ryder, East Texas.	Prefers single-line service.	Deaton and Strickland.

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
67. (653) American Fence Co., Birmingham, Ala. Steel fence and posts	From Houston to Birmingham. Two shipments move monthly ranging between 3,000 and 5,000 pounds.	T.S.C.	Wants faster service in making delivery.	Denton.
68. (655) Moore-Handley, Inc., Pelham and Birmingham, Ala. Hardware merchandise	From plant sites at Pelham and Birmingham, to Mobile, Ala., and Pensacola, Fla. and from points in Illinois, Michigan, Pennsylvania, New York, Texas, and Mississippi, to Pelham and Birmingham. Outbound, about 10 million pounds moves annually to Mobile, and about 3 million pounds moves annually to Pensacola. Inbound, about 900,000 pounds moves yearly from Texas points, and about 1 million pounds moves annually from points in Mississippi.	G.F.A., Nelson, Campbell, Johnson, Strickland, Gordons, West, Cole, Moore Handley, Associated, Central, and Southern Railroad	Wants faster transit time, such as proposed second-day service from Houston to Birmingham and Greenville, to Pelham. Average elapsed time from Texas points is 6.3 days, from Mississippi 3.3 days. Weekends included in elapsed time.	Roadway and Strickland. Transit study only covers about 50 percent of shipments which moved between 9/21/66 and 12/25/66.
69. (662) James S. Reed & Co., Birmingham, Ala. Office equipment and supplies	From Wichita Falls, Carrollton, Tex., and Atlanta, Ga., to Birmingham. It receives 25 shipments monthly from each point.	Gordons, Transcon, and Georgia Highway	Needs faster service. Wants third-day service from Wichita Falls, second-day from Carrollton, and one-day from Atlanta. Average transit time, including weekends, is 8.7 days, from Wichita Falls, 6 days from Atlanta, and 5.1 days from Carrollton.	Strickland. Specific tonnage not given. Transit study includes all shipments during the period.
70. (663) Chemical Solvent Co., Birmingham, Ala. Chemicals and compounds, in drums	From Birmingham to points in Mississippi, Louisiana, Arkansas, and Texas. Approximately 9,625 pounds moves annually to the destination States collectively.	Campbell, Ryder, and Denton.	Needs faster service. Wants the proposed second-day service to Texas points, and overnight service to Mississippi points.	Strickland. Shipper's commodities require covered vehicles.
71. (673) Genesco, Inc., Huntsville and Florence, Ala. Clothing	From Huntsville, and Florence, Ala., to points in Texas. About 9.75 million pounds moves collectively from these points annually.	Gordons, Ryder, Red Ball, East Texas, Strickland, and Consolidated.	Wants more consistent service and wants third-day service.	Baggett. Shipper is satisfied with Gordons' single-line service to Dallas, and it is satisfied with Roadway's service to some Texas points.
72. (674) Industrial Piping Supply Corp., Bessemer, Ala. Pipes, valves, and fittings	From Bessemer, to points in Mississippi, Louisiana, Arkansas, Florida, Tennessee and Texas. Fifty-eight shipments totaling 29,471 pounds moved collectively to the destination States between 3/31/66 and 6/30/66.	East Texas, Mercury, Campbell, West, Ryder, and Cole.	Prefers single-line service. Wants overnight service to Louisiana and Tennessee points, and second-day service to others. Average transit time to Tennessee is 2.0 days, and to Mississippi 4.4 days.	Bowman and Jones. Shipper made specific complaints against Campbell. Transit study includes all shipments during period covered.
73. (681) Wil-Mar Supply Co. Inc., Birmingham, Ala. Screws, fastening devices, grills, and registers.	From Fort Worth, and Winters, Tex., to shippers facilities at Birmingham and Gadsden, Ala. Receives about 4,000 pounds a year from Fort Worth, and between 8,000 and 10,000 pounds a year from Winters, to Birmingham, with occasional shipments to Gadsden.	Red Ball, Cole, Dunset, and Gordons.	Wants between 1-and 3-day service from and to origin and destination points. Shipper states that present transit time averages "about-a-week."	Strickland.
74./ (687) Boaz, Ala	See shipper under Tex. heading			
75. (704) Phillips Supply Company, Gadsden, Ala. School furniture, fixtures and supplies, chairs, tables and trays, and restaurant equipment	From Conway, Ark., Kansas City, Kans., Ruston, La. and Dallas and Fort Worth to Gadsden. It receives from Conway 20 TL a year; from Kansas City 1 TL a month, from Ruston between 6 and 8 truckloads a year; and from Dallas 6 or 7 truckloads a year.	Mail, Jones, Bowman, Transcon, McCombs, Baggett, Ross, Kavanaugh, Ryder, Roadway, and Mercury.	Wants better transit time with less damage in transit. Average transit time about 4 days. Wants overnight or 2-day service from Conway, Dallas, and Kansas City. Wants overnight service from Ruston to Gadsden.	Bowman. Shipper transports a substantial portion by private carriage.
76. (804) Mesco, Inc., Birmingham, Ala. Welding equipment and supplies	From Birmingham to points in Mississippi, and Louisiana. Shipped in excess of 100 LTL shipments to the above points from 8/3/66 to 11/15/66. Weight was from 40 to 500 pounds.	West, Campbell, and Ryder.	Present service is inconsistent. Present transit time is from 1 to 3 days. Wants proposed overnight service.	Bowman.

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
(8927) Tel Kart Factory Outlets, Oklahoma City, Okla. (b) Woodward Bros. Fixtures Inc., Oklahoma City, Okla. (c) Kent's Super Mkts., Birmingham, Ala. Store fixtures	From Kent's plant at Birmingham to Fort Smith and Little Rock, Ark; Joplin, Kansas City, and St. Louis, Mo.; Wichita, Kans., and Tulsa and Oklahoma City, Okla. Shipped in excess of 200,000 pounds to above points in a designated 5-week period prior to the hearing.	Transcon, Campbell, and Cole.	Needs faster transit time. Wants overnight service from Birmingham to Little Rock, and second-morning service to other points.	Jones: Several carriers offer single-line service.
(8305) Vulcan Steel Corporation, Birmingham, Ala. Steel bars and plates	From Birmingham to points in Mississippi, Louisiana, Arkansas, Texas, Missouri, and Kansas. During the last 3 months of 1965 shipper made 58 shipments to the above points. Average weight is about 2,000 pounds.	Baggett, east, Gardner, Red Line, ETSW, Red Ball, Burks, Mosliner AMF, Jones and Eagle.	Joint-line service is too slow. Allows 4 to 9 days for delivery.	Bowman and Jones.
(8304) Moore-Handley Hardware Co., Inc., Pelham, Ala. General goods	From points in Tennessee, Arkansas, Texas, Mississippi, Colorado and Missouri to shipper's facilities located at Pelham, Montgomery, Huntsville, Bessemer, West Gate, and Mobile, Ala.; Pensacola, Miami, and Orlando, Fla., Memphis, Chattanooga and Nashville, Tenn.; and Atlanta, College Park, and Tucker, Ga. Thirty LTL shipments weighing 37,219 pounds were shipped between 12/15/66 and 2/2/67, as follows: to Mobile, Ala., from Plano, Tex. 1; from Forest City, Ark. 1; from Memphis, Tenn. 2; from Little Rock, Ark. 1, from Harrison, Ark. 2; from Kansas City, Mo. 1; from Greenwood, Miss. 1. To Orlando, Fla. from Memphis, Tenn 1, from Houston, Tex. 1, and from Greenville, Miss. 1. This amounts to 25 percent of traffic from the points during the period of time covered.	Gardner, Campbell, Watson, and Hall.	Present service gives inconsistent transit time. From Tenne to Pelham, wants second-morning service, third-day to Orlando, and fourth-day to Miami. From Kansas City needs second-day service to Alabama, Georgia and Pensacola, Fla. and over-night service from Memphis to Alabama and Georgia.	Bowman. Shipper also also supported Red Ball. Several soliciting carriers can move shipper's traffic in interline service
(886)Gadsden, Ala.	See shipper under Docket No. heading.			
(904) Revere Copper and Brass Inc., Rome, N.Y. Aluminum articles	From shipper's Scottsboro, Ala., plant to points in Mississippi, Arkansas, Louisiana, Texas, Missouri, and Kansas.	Shipper exported the plant to open in 1967.	Wants single-line service because competition has single-line service. Wants overnight service to points within 900 miles and second-day service to points beyond 900 miles.	Bowman. Bowman would not permit interchange with its connecting-rams. Shipper has supported other carriers but it appears that its expected shipments require the availability of several carriers. Since 1967 shipper has supported 14 carriers, including Mason Dixon, Baggett, Beetow, Colonial, Cole, Laborde and Eagle for service from Scottsboro. Needs connecting-rams
(910) Goodyear Tire & Rubber Company, Akron, Ohio Tires and related goods	From shipper's Gadsden, Ala. plant to Rockmart, Cedartown, and Cartersville, Ga., Topeka and Kansas City, Kans., and New Orleans, La. In 1966 shipper moved 16.5 million pounds to Topeka, 1.1 million pounds to Kansas City, 3.6 million pounds from Topeka to Gadsden, and 20.6 million pounds from the three Georgia plants to Gadsden. Movements are 99 percent TL, and 2.6 million pounds moves from Gadsden to New Orleans annually.	Holloway, Roadway Bowman, Ryder, Cole, Dixie and Beaton.	Shipper wants more and better single-line service. Wants 2-day service on TL and 3-day service on LTL	Bowman and Roadway. Holloway and Roadway serve shipper in single-line service between Georgia points and Gadsden. Roadway's route is circuitous. Many carriers serve New Orleans from Gadsden but shipper states that no carriers want to handle inbound freight.
(912) Gamlen Chemical Company, Mobile, Ala. Chemicals	From Mobile to Houston (10,000 pounds a week) and Port Arthur (5,000 pounds a week), Tex. Ninety percent of the traffic is LTL.	Mercury and Red Ball	Present service is too slow. Wants single-line service receiving 3-or 4-day service to Houston and Port Arthur.	Baggett. Fifty shipments in the last 9 months were delayed.
(916) United Chair Company, Leeds, Ala. Office chairs	From Leeds, Ala. to Dallas, Fort Worth, Beaumont, and Houston, Tex. In 1966 shipper moved in excess of 200,000 pounds to the above points. All shipments were LTL with an average weight of between 500 and 2,000 pounds.	Baggett, Anniston, Red Ball, ETSW, and Mercury	Prefers single-line service. Wants faster transit time. Single-line service would assertedly lessen chances of damage	Baggett. Tyder can serve some of the involved points directly. Shipper does not recall the last time a customer complained about the delivery of shipments being delayed or damaged.

Summary of evidence of supporting shippers—Continued

ARKANSAS

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (72) Murphy Ford Company, Hamburg, Ark. Truck parts.	Inbound from Atlanta, Ga. to Hamburg. Because of its dissatisfaction with the service from Atlanta, shipper now orders its truck parts from Oklahoma City, Okla. If it had satisfactory service from Atlanta its orders for truck parts would be placed at this point. Shipper receives LTL shipments every business day with the shipments weighing between a few pounds and several hundred pounds. It would tender applicant between 250 and 600 pounds weekly.	Red Line is the delivering carrier. It interlined at Memphis, Tenn. on the Atlanta shipments, and at Little Rock, Ark. on the Oklahoma shipments.	Shipper wants a fast, consistent and dependable service from Atlanta. It requires the proposed second-morning service.	Strickland.
2. (114) Union Floor & Carpet Company, El Dorado, Ark. Carpeting and floor coverings.	Shipper receives at El Dorado 3 or 4 shipments a month, weighing 500 to 700 pounds each, from Dalton and Atlanta, Ga. It also receives shipments from Rome and Plainville, Ga.	T.I.M.E., Atlas, Georgia Highway, ITIWWC, and Powell.	Shipper allows 10 days from points in Georgia to El Dorado. It wants 3- or 4-day service. Transit time is important to shipper since many of the builders it supplies have deadlines. A transit time study was introduced showing that between February 2, and September 17, 1965, on some of its traffic, namely five interlined shipments, to El Dorado from Atlanta, Rome and Plainville, transit times were between 6 and 14 days including weekends. All the shipments were delivered by Atlas.	Strickland. Shipper is not aware of any single-line service from Atlanta to El Dorado.
3. (115) Lion Oil Co., El Dorado, Ark. Packaged petroleum products.	From El Dorado 25 LTL shipments in May and June 1966 moved to and through Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. These shipments had an average weight of 2,582 pounds. Shipper moves about 12 TL a month in private carriage to points in Mississippi. It ships about 60,000 pounds a month by for-hire carriers to Birmingham and Atlanta.	On shipments to Alabama, Georgia, Florida, South Carolina, and North Carolina, Herrin, Red Ball, and Atlas originate the traffic and interline it at Memphis, Tenn. Private carriage is also used to points in Arkansas, Tennessee, and occasionally into Texas.	Shipper wants single-line reasonably consistent service. It commenced using private carriage to Mississippi after being informed by Arkansas-Best that this carrier no longer wanted to handle shipper's traffic through Greenville, Miss.	Strickland.
4. (129) Remington Office Machine Company, Searcy, Ark. Office machines.	From Searcy to Atlanta, Ga. and Birmingham, Ala. Approximately 30 tons a year is shipped from Searcy to Atlanta and between 12 and 15 tons a year from Searcy to Birmingham. The shipments are a LTL and weigh between 40 and 600 pounds. Shipments are made to Atlanta approximately twice a week and to Birmingham weekly. Traffic also moves to New York, N.Y.; Philadelphia, Pa.; Richmond, Va., and Miami, Fla.	Powell originates the traffic and interlines at Memphis, Tenn. with Gordons, T.I.M.E., Herrin, Ryder, and Bowman. Springmeyer, a freight forwarder, and Railway are used for delivery of shipments to New York interlining at Memphis.	Shipper wants 3-day service to Atlanta. It is not satisfied with the existing service to this point. Shipments would be originated by Powell and interlined at Little Rock, Ark. with applicants. Shipper's competition has a warehouse in Atlanta so time in transit is an important factor. Complaints have been received with respect to transit times to Birmingham and some orders have been canceled. Shipper also complains about the transit times to the other specified points to which it ships.	Bowman and Jones. Bowman presently interlines with Powell at Memphis. If its application were granted the interline point would become Little Rock. Shipper is not satisfied with the existing Powell-Bowman interline service.
5. (130) Mankin Can Company, Cincinnati, Ohio. Container cement, chemicals, zinc oxide, paste, and tin plate.	Inbound to shipper's plants at Springdale and Blytheville, Ark. from Birmingham, Ala. and Atlanta, Ga. Shipper receives, at its Springdale plant from Atlanta about 250,000 pounds of TL shipments and between 2,700 and 4,000 pounds of LTL shipments twice a month. The Blytheville volume is less than this.	Gordons and Jones.	Shipper wants a direct single-line service. It expresses a need for the proposed second-day service from Birmingham and Atlanta. Shipments of container cement require protective service at temperatures below 45 degrees Fahrenheit. Shipper's Chicago supplier has opened a new plant at Atlanta and wants to supply shipper from this point. Two shipments from this Atlanta facility were handled by Gordons and Jones in interline service. Shipper was not satisfied with the 5- and 6-day service including weekends.	Jones. Shipper has used Jones' service and describes it as good. This carrier has provided protective service.
6. (132) Bear Brand Hosiery Company, Chicago, Ill. Inbound-synthetic yarn. Outbound-synthetic hosiery	Inbound from Atlanta, Ga. to shipper's mills at Fayetteville, Bentonville and Siloam Springs, Ark. Shipments are received two or three times a week. Outbound shipments move from Fayetteville and Bentonville two or three times a week to Atlanta and Birmingham, Ala. The shipments weigh between 100 and 300 pounds.	Bowman, Gordons, Campbell, and Jones. Shipper uses Bowman interlining with Jones from Atlanta and Birmingham.	Shipper wants single-line, second-day service between its three Arkansas mills, on the one hand, and, on the other, Atlanta and Birmingham. It does not receive single-line service between these points. Transit time is important because shipper has production schedules to meet. It allows between 5 and 7 days for delivery.	Jones. Shipper indicates that the service involving Bowman interlining with Jones is not satisfactory.
7. (133) Shakespeare Company, Kalamazoo, Mich. Golf and fishing equipment.	From Fayetteville, Ark. through the Atlanta, Ga. and Birmingham, Ala. gateways shipper has movements to 33 points in Alabama, 36 points in Georgia, 110 in Florida, 25 points in South Carolina, and 50 points in North Carolina. It has daily LTL shipments of 500 to 2,000 pounds moving from Fayetteville, Ark. to or through Birmingham and Atlanta. Eighty percent of this traffic is handled by two or more carriers.	Jones handles shipper's traffic on an interline basis with unspecified carriers.	Shipper wants direct, single-line service to Birmingham and Atlanta. It allows 4 days for delivery with the existing service. Jones proposal of second-day service would meet shipper's needs. Shipper has experienced difficulties with tracing.	Jones.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destination, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
8. (207) Camden and Pine Bluff, Ark.	See shipper under South Carolina heading			
9. (222) Baldwin Piano Company, Cincinnati, Ohio, Pianos, Organs and amplifiers	From shipper's Fayetteville and Conway, Ark., and Greenwood, Miss. plants to Atlanta, Ga., and Birmingham, Ala. These shipments average 1,900 and 2,000 pounds. During 1965 shipper had movements from Greenwood, Conway, and Fayetteville to Atlanta, Athens, Dublin, Macon, Savannah, Augusta, and Columbia, Ga.; Greenville, Columbia, Spartanburg, and Charleston, S.C.; 17 named points in Florida; and Birmingham, Ala. One-third of the 1965 Greenwood tonnage moved in private carriage.	Campbell interlining with Georgia Highway at Birmingham, Ala., is used from Fayetteville to and through Atlanta to South Carolina and on movements to Florida. Campbell interlining with Bowman at Birmingham, has also been used to Florida from Fayetteville. From Conway, Holt and ABF interline with Gordons at Memphis, Tenn. From Greenwood, Taylor interlining T.I.M.E. at Memphis, Tenn. is used. Gordons' single-line service from Greenwood to Atlanta has been used. Roadway is also used from Greenwood.	Transit time is important because dealers do not stock all of shippers' models. Also, sometimes delivery must be made as scheduled or performance bonds will be forfeited. Since the dealers do not have loading docks, shipper requires that the vehicles used be equipped with hydraulic tailgates. Central has refused to accept shipper's interline traffic to Florida. Shipper received complaints on the transit times of two shipments to Atlanta and Florida, respectively. The Atlanta dealer requested that Transcon not be used again. From the origin points to South Carolina, shipper allows 5 to 7 days for delivery. From Greenwood to Georgia it allows 4 to 5 days, and to Florida it allows 10 days. Shipper wants 2-day service from Conway and Fayetteville to Atlanta, overnight service from Greenwood to Atlanta, 4-day service to northern Florida, and 5-day service to southern Florida. To South Carolina, shipper wants 3- or 4-day service from Fayetteville, Conway, and Greenwood. To Birmingham shipper wants overnight service from Conway and Greenwood and 2-day service from Fayetteville. Shipper introduced a study of 29 shipments from the three origin points to Atlanta. Transit time were given on only six of the shipments.	Bowman and Jones. Shipper has used the services of Jones and has found them satisfactory. Jones serves Fayetteville, Conway and Greenwood. Its service to Memphis is described as satisfactory. Also, Campbell's service to Birmingham has been satisfactory. Applicants have indicated that they would use vehicles equipped with power tailgates in the proposed service.
10. (217) Fort Smith, Ark.	See shipper under Texas heading.			
11. (240) Little Rock, Texarkana and other points in Arkansas	See shipper under Texas heading.			
12. (324) Western Auto Stores El Dorado, Ark. general merchandise	Inbound to El Dorado, shipments are received from Chicago, Ill., Kansas City, and St. Louis, Mo., Tulsa and Oklahoma City, Okla., Dallas and Fort Worth, Tex., and Memphis, Tenn.	Red Ball, ABF, and Atlas.	Time in transit is important to maintain lower inventory. Shipper prefers single-line service, particularly on furniture items, to reduce damage.	Bowman and Jones.
13. (328) AMF Cycle Division of American & Foundary, Inc., Little Rock, Ark. Bicycles	From Little Rock during June 1966, shipper had 76 movements weighing a total of 45,901 pounds, with the average shipment weighing 600 pounds, to specified points in Georgia, Alabama, North Carolina, Florida and South Carolina.	Jones; Gordons interlining with Georgia Highway, McLean, Universal, Bell, Johnson or Hall, REA; Mercury; Gordons; best interlining with CTAWBC or Central; Mercury interlining with Southeastern; Ryder or Alabama Highway and Baggett; and Campbell interlining with Howard Hall.	Desires third-morning delivery to northern Florida and fourth-morning service to Miami and to North and South Carolina. Desires next-day service to Atlanta and Birmingham. Transit study indicates 9-12 day service to Florida. The average is over 7 days and approximately 7 days service to Carolinas.	Bowman and Jones.
14. (329) Texarkana Chamber of Commerce, Texarkana, Ark.-Tex.			Will support all applications for service to Texarkana because of general growth of business.	Jones, Bowman and Strickland.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
15. (3982) Lavery Corporation, El Dorado, Ark. Witness in traffic commitment for: Blackard Ink Co. Prescolite Mfg. Co., Great Lakes Chemical Co., Dixon Lumber Co., Pine Lumber Co., Ward Davis Lumber Co., and Cross Petroleum Co., all of which are located in Texarkana or the El Dorado area. (a) Blackard: Printing ink (b) Prescolite: light fixtures (c) Great Lakes: chemicals (d) Dixon Lumber: pallets (e) Ward Davis: pallets (f) Cross Petroleum: petroleum and petroleum prod.	(a) From El Dorado to specified points in Georgia, Missouri, Illinois, Oklahoma, and Florida, twice weekly. Shipment average from 10 to 100 pounds. (b) From El Dorado to specified points in Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, and Iowa. Shipper's exhibit for period May 16, through October 3, 1966 indicates total volume of 31,957 pounds, the preponderance of which moved to Missouri and Kansas. (c) From El Dorado to points in Alabama, Georgia, and the Carolinas, twice weekly with shipments ranging from 1,000 to 15,000 pounds; 640,000 pounds weekly to Chicago, Ill., 100,000 pounds weekly to St. Louis, Mo., 50,000 pounds weekly to Oklahoma City, Okla., 50,000 pounds weekly to Tulsa, and 25,000 pounds weekly to Springfield, Mo. (d) From El Dorado to Atlanta, Ga., three times monthly, and to specified points in Missouri, Illinois, Oklahoma and Florida, twice monthly. Average shipment weighs between 20,000 and 30,000 pounds. (e) From Texarkana, Ark., to Kansas City, Mo., and points in Iowa, twice monthly at 20,000 to 30,000 pounds a shipment. (f) From Hanchover, Ark., 40,000 to 60,000 pounds monthly to Georgia; 200,000 pounds monthly to Florida; "TL quantities" twice monthly to the Carolinas; 50,000 pounds monthly each to Chicago, Ill., Kansas City and St. Louis, Mo., 50,000 pounds monthly to specified points in Missouri and Alabama.	Red Ball, Atlas, Mervin, Arkansas-Best	Currently uses three-line service to Iowa and Illinois and complains of slow transit times, damage to lading, and tracing difficulties. Desires direct service to Atlanta and Birmingham. Wants 2-day service. The six Arkansas companies basically wish to eliminate joint-line service as much as possible to avoid delays in transit.	Jones, Bowman and Strickland.
16. (3340) Rockwell Manufacturing Company Russellville, Ark. parking meters	From Russellville, shipper has LTL movements to Birmingham, Ala. and Atlanta, Ga. Also to points in North Carolina, South Carolina, Alabama, Florida, and Georgia.	Brown, Ryder, Georgia Highway (delivering carriers) Mercury, Jones, Red Ball, Carter Truck Line, and Henry Truck Line (originating carriers).	Consistency of transit times is important to meet installation schedules. Accordingly, shipper desires to eliminate three-line hauls and limit two-line hauls. Wants second-day service to Atlanta and Birmingham. Shipments to Florida currently move through Memphis gateway, but shipper would utilize Atlanta more often if it could rely on consistent two-day service to Atlanta.	Jones.
17. (3551) (a) Carpets, Inc. Little Rock, Ark. Carpets padding and drapes (b) D.T. Jones Construction Company Little Rock, Ark. construction supplies	(a) From Birmingham, Ala., and Atlanta, Ga., and points in Massachusetts, Tennessee and Pennsylvania to Little Rock, Ark. Shipper receives construction materials and supplies four times a year with each load weighing between 200 and 600 pounds. (b) From points in Pennsylvania, Georgia, Tennessee, and New York, N.Y., Dallas, Tex., Lawrence, Mass., and Anderson, S.C. to Little Rock. From 6/11/65 to 5/10/66, shipper received 42 shipments averaging 1,000 pounds each.	Universal, Powell, NFL, Robinson, Ryder Viking, Ga. Hwy, ETHWC, Northern, T.I.M.E., Baggett, Bowman, Wilson, G & P, Gordons T.I.M.E., ETHT, Atlas, Campbell, Burks.	Wants single-line service for less delays. Transit time from Pennsylvania are from 5 to 14 days, from Georgia 3 to 10 days, from Massachusetts 13 days and from Tennessee 2 to 7 days, all including weekends. Wants Bowmans' service on traffic from Georgia, Tennessee, and Pennsylvania.	Jones and Bowman. Jones proposal would not give shipper a single-line service.
18. (4023) Acme Linoleum and Tile Co., Inc Little Rock, Ark. Rugs, carpets fabrics, and tile	From points in Pennsylvania, Georgia, North Carolina, South Carolina, Florida, New Jersey, and New York to Little Rock. From 12/2/65 to 9/1/66 shipper transported 51 shipments. Their average weight was 750 pounds.	Acme, Georgia Highway Consolidated, ETHT, PME, Wilson, ETHWC, Atlas, Gordons, Mercury, Superior, T.I.M.E., SWT, Bowman, Ryder, Roadway, Tovrimat, Murdock.	Wants faster more consistent time-in-transit. Average transit time is 5 to 7 days, including weekends. Needs 2-day service from points in Alabama, Georgia, and Tennessee and the Carolinas, 3-day service from New York and Pennsylvania points. Wants proposed next-day service from Atlanta.	Jones and Bowman.
19. (4029) Tri State Mill Supply Co. Crossett, Ark. Pump parts, woodwork equipment, and industrial supplies.	From Atlanta, Ga., Birmingham, Ala., Dallas, Houston, San Antonio, and Fort Worth, Tex., and Greenville, Miss., to Crossett. Shipper receives between 40 and 60 shipments a month with the shipments averaging between 300 and 500 pounds.	Watson, ANF, Eastern, Spector, FX1, Red Ball, Red Line	Wants faster service. Prefers single-line service. Randomly selected freight Bills show average transit time of between 4 and 5 days. Only a few transit times given. Needs 2-day service from Atlanta and two Birmingham 3-day service.	Strickland, Jones, and Bowman. Shipper has not tried the services of several existing carriers. Shipper states it is getting good service from Dallas.

Summary of evidence of supporting shippers—Continued

ARKAN A.—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting appl. of T.	Application supported and protested
20. (w.o.) Southern Pacific Corp. Crossett, Ark. Paper products	From Crossett to Anniston, Birmingham, and Tuscaloosa, Ala.; Atlanta, Ga.; Shreveport, La.; Jacksonville, Miami, and Tampa, Fla.; and Dallas, Fort Worth, San Antonio, and Texarkana, Tex. Ships outbound almost .25 million pounds annually. Ships 22 shipments a month to each of the above points. Receives 12 shipments a month from Birmingham, Atlanta, and Savannah. All shipments are TL.	Private carriage Red Ball, Red Line, ETMW, Strickland, and Jones	Wants better single-line service.	Strickland.
21. (wl.) Weiner Hardware and Lumber, Hamburg, Ark. Hardware	From Texarkana, Tex., points in Mississippi, Atlanta, Ga., and points in South Carolina to Hamburg. No volume figures presented.	Red Line.	Has no specific complaints, wants single-line service.	Strickland.
22. (wls.) W. Shankman and Sons, Inc., Magnolia, Ark. Cotton piece goods	From points in North Carolina, South Carolina, Alabama, and Mississippi, to Magnolia. Receives between 18 and 20 shipments each month, weighing from 2,000 to 3,000 pounds.	Overnite, Dixie, Red Ball.	Wants consistent service. Average transit time is 4 days, including weekends. Wants 4-day service. Also wants proposed 2-day service from Atlanta.	Strickland.
23. (wls.) J.A. West Co., El Dorado, Ark. General merchandise	From points in Georgia, North Carolina, South Carolina, and Alabama to El Dorado. Weights range from 100 to 900 pounds. Received 24 shipments from 9/44 through 4/45	T.I.M.E., Atlas, ETMW, Powell, Ryder, Gordons, and Merrin.	Wants faster more consistent service. Wants proposed 2-day service from Atlanta and Birmingham to El Dorado.	Strickland. Shipper does not route all shipments.
24. (430) Waller-McCoy Co., Texarkana, Ark. Dry goods.	Inbound from points in Alabama, Georgia, North Carolina, South Carolina, and Virginia and from Texarkana, to points in Arkansas, Texas, and Oklahoma. Between July and September, 1944 shipper received 2 shipments from Alabama totaling 2,292 pounds; average weight a shipment 1,146 pounds. From North Carolina during same period shipper received a total of 17,807 pounds, each shipment averaging 1,119 pounds. From South Carolina (same period) 1,840 pounds averaging 613 pounds a shipment. Outbound daily shipments move to Oklahoma average between 250 and 400 pounds. (Specific tonnage for other points not given).	Last Texas, Arkansas-Best, and Red Ball. Southwestern and Strickland are used at Texarkana. Also, number of carriers have been used to originate traffic in the East.	Wants 2-day service from points in Alabama, Georgia, Virginia, and the Carolinas, and wants 2-day service to Oklahoma points. Average transit time from Georgia and the Carolina points is 6.4 days. From Virginia average transit time is 6.9 days. (Average transit time from other points not given.)	Bowman and Jones. Transit study does not include all shipments which moved during the period in question. No specific complaint about existing service.
25. (w52) Sears Store?	See shipper under Texas heading.			
26. (w58) Forest Gar Company, Inc., Conway, Ark. Oars and paddles	From Conway between 1/17/44 and 12/10/44, a total of 76 shipments were moved to Birmingham, Montvale, Florence, Montgomery, and Tarrant, Ala.; points in Georgia, including Atlanta; to 24 points in Florida including Miami, Clearwater, and Petersburg, Fla., Asheville, Statesville, Charlotte, Burlington, and Goldsboro, N.C.; Bristol, Kingsport, and Roanoke, Va., Baltimore and Frederick, Md., Parkersburg and Charleston, W. Va., eight points in New York, New Bedford and Fall River, Mass., Hagerstown, Pa., Altoona, and Johnstown, Pa., and Charleston and West Columbia, S.C. The traffic is LTL.	Arkansas-Best and Holt originate the traffic and interline at Little Rock or Memphis	Shipper is not satisfied with the service to the involved destination points. Complaints are received daily during shippers busy season. It allows 7 days for delivery to Atlanta and Birmingham and 10 days to other points in Georgia and Alabama and to points in New York, Pennsylvania, and Florida.	Bowman and Jones.
27. (w61) Brancroft Industries, Inc., Cabot, Ark. Army caps and cloth items	From Cabot to points in the United States. Representative States are: Pennsylvania, The Carolinas, Alabama, Georgia, Florida, New York, New Jersey, Maryland, Tennessee, and Utah. About 2,350 moves annually.	Powell, Superior, Jones, Gordons, T.I.M.E., and Transcon in joint-line service through either the Little Rock or Memphis gateway.	Needs faster service, as a government contractor it is subject to penalties for late deliveries. Needs a two-line service as opposed to the present three-line. Presently allowing 7-days lead time to Atlanta, 2 to 4 days to other points in Georgia, 5 days to Florida, 6 to 7 days to points in Maryland, and 9 to 10 days to New York.	Jones and Bowman. The requested authority would only give shipper a two-line service to Atlanta, Ga., service to the other destination points would continue to be three-line basis. It appears that shipper has two-line service to all involved destination points, but is not satisfied with the service of these unnamed carriers.
28. (54) Steele Canning Company, Springdale, Ark. Canned foods	From shipper's plants in Springdale, Lowell, and Fort Smith, Ark., and Sparo, Stigler, and Westville, Okla., to Atlanta, Ga., Birmingham, Ala., and points in North Carolina, and South Carolina. Approximately 620,000 pounds, 800,000 pounds, 140,000 pounds and 400,000 pounds shipped to respective destination States during first 9 months of 1944. All are TL shipments.	Transcon, Peddish, Jones, and private carriage	Shipper wants to eliminate use of private carriage in destination area.	Jones. Shipper is presently using the service of U.S. Peddish Transportation, a motor contract carrier to the involved states, without complaint.
29. (lcl) Spotlight Co., Inc., Allentown, Pa. Ladies lingerie	From Alsman, Albermarle, and Collins, N.C., to its plant at Ashdown, Ark., from Ashdown, Ark., to points in Alabama, Georgia, Florida, Mississippi, North Carolina, and South Carolina. Inbound annual volume is about 100,000 pounds. Outbound annual volume is about 100,000 pounds.	Roadway, ATF, Arkansas-Best, and Strickland.	Joint-line service inadequate. Wants faster service. Presently allowing 10 days lead time.	Strickland.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
30. (577) Georgia Pacific Corp., Crossett, Ark. Pulpboard, paper and paper products.	From Crossett, to points in Alabama, Georgia, Florida, North Carolina, South Carolina, and Tennessee. Shipments range between 10c and 4e,18c pounds.	Red Ball, Arkansas-best, Red Line, Jones, Thurston, Warner Smith, Ellis, Renner, East Texas, Strickland, Superior, ET&WNC, Carolina.	Shipper wants to eliminate private carriage to Florida. Wants third-morning service to northern Florida and fourth-morning service to southern Florida.	Bowman and Jones.
31. (603) Gothen Educational Equipment Co., Inc., Marked Tree, Ark. Educational equipment	From Marked Tree to points in Alabama and Georgia. Approximately 300,000 pounds moves annually.	Ryder, East Texas, Gordons, Jack Cole, Aeman, Alabama Highway, M.A.T., ET&WNC, Jones.	Joint-line service inadequate. Shipper states that Alabama Highway and Campbell have refused its freight. Shipper noted a complaint by one of its Florida customers against Ryder.	Jones.
32. (611) Shannonsue Sons, Inc., Magnolia, Ark. Clothing.	From Magnolia, to Chicago, Ill., Atlanta, Ga., Birmingham, Ala., Kansas City, Mo., and Dallas, Tex., and return. Shipments range between 50 and 300,000 pounds.	Southwestern, Red Ball, East Texas, Jones, Strickland, ABF, Campbell, Floyd & Beasley, Gordons, ET&WNC, Cole, and Roadway.	Joint-line service inadequate. Wants second or third day service to and from Chicago, and second-day service to and from Atlanta, and Birmingham.	Jones.
33. (627) Home Supply Company, Hamburg, Ark. Furniture, and carpets, stoves.	From Atlanta and Dalton, Ga., Roanoke, Virginia, and Dallas, Houston, and Waco, Tex., to Hamburg. Between 10 and 15 shipments monthly, ranging between 100 and 400 pounds.	Red Line, Arkansas-Best, and Missouri Pacific railroad.	Needs faster service. Wants second-morning service.	Strickland.
34. (678) Solo Lighting, Inc., El Dorado, Ark. Lighting fixtures.	From El Dorado to Atlanta, Ga., Birmingham, Ala., Dallas, Tex.; Baltimore, Md.; Tulsa, and Oklahoma City, Okla.; St. Louis, and Kansas City, Mo., and points in New York. Weekly shipments range between 100 pounds and 500 pounds.	A.B.F., Atlas, Campbell 66, Transcon, Red Ball, Herrin.	Wants faster transit service. Presently allowing 5-days lead time to Oklahoma City, 4-days to Kansas City, between 4 and 5 days to Atlanta and Birmingham, 6 days to New York, and third-morning to Dallas.	Bowman, Jones. Shipper states that because of customer complaints it has discontinued the use of A.B.F. to Kansas in favor of joint-line service.
35. (679) Greater El Dorado Committee, El Dorado, Ark.	From and to El Dorado.	Red Ball, Herrin, Arkansas-Best, Atlas.	Interested in additional transportation services.	Jones. Interstate Atlas, and Arkansas-Best, serves El Dorado in single-line service to many points.
36. (681) Daisy Manufacturing Co. Rogers, Ark. Air rifles, B.B. shot and toy guns.	From Rogers to Atlanta, Ga., and Birmingham, Ala. About 1 million pounds and 550,000 pounds moves respectively to each point.	Campbell, Jones, Ryder, Red Ball, Centra.	Wants faster service.	Jones. Shipper is dissatisfied with Campbell's single-line service to Birmingham because transit time. Other joint-line service too slow.
37. (685) Warner Ivory Handle Co., Hope, Ark. Wooden handles.	From Hope to points in Alabama, Florida, Mississippi, North Carolina, and South Carolina. About 400,000 pounds moves annually.	Strickland, interlining with other unnamed connecting carriers.	Joint-line service inadequate. Wants better 1 and 3-days service. Presently allows between 8 and 10 days lead time.	Strickland.
38. (686) (a) Prince Poultry, Inc., (b) Prince Manufacturing Co. (c) Tost Hatch & Feed Mill, Inc., (d) Lincoln Egg, Inc., (e) S.E. Prince Co., all of Lincoln, Ark. Ates. Trusses, Poultry Buildings and equipment, produce, eggs and feed.	From Birmingham, Ala., and Columbus, Ga., to Lincoln. Annually, approx. 1.1 million and 10,712 pounds moves from respective cities.	Jones, Ryder, and Alabama-Georgia.	Joint-line service inadequate. Wants 2-day service. Must now allow 10 days to 2 weeks lead time.	Jones.
39. (710) American Greeting Corp., Osceola, Ark. Greeting cards and related items.	From Osceola, Ark. to points in Alabama, Georgia, Florida, North Carolina, and South Carolina. About 35 million pounds moves annually in TL and LTL shipments.	Gordons, Campbell, ET&WNC, Superior, Arkansas-Best, M.A.T.	Wants LTL single-line service to destination States.	Jones. Shipper states that Ryder can serve it in single-line service but this carrier is not interested in the traffic. Traffic seasonal needs expedited delivery.
40. (711) Gravette	See shipper under Missouri heading.			

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Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
42. (735) Blades Mfg. Co. Rector, Ark. Aircraft and missile parts.	From Rector to Marietta, Ga. (four shipments a week totaling between 4,000 and 5,000 pounds and Birmingham, Ala. (400 to 500 pounds a week.)	Southwestern, Arkansas Best cannot give daily pickup). Transocean (by interlining with Jones.	Present service too slow. Jones offers overnight service to Birmingham and Atlanta. Average transit time between 2 and 3 days. Wants proposed overnight service to Atlanta and Birmingham. Wants faster service.	Jones. If authority is granted. If Jones could not deliver commodity from Rector to Marietta, in single-line service, it would have to interline at Atlanta. Jones
42. (735) Harry G. Barr Company, Fort Smith, Ark. Aluminum extrusions.	From Atlanta, Ga. and Birmingham, Ala. to Fort Smith. Atlanta to Ft. Smith one shipment every 6 weeks weighing 3,000 pounds. Birmingham to Ft. Smith once every 6 weeks weighing between 700 and 1,000 pounds. Not presently shipping outbound from Ft. Smith.	Gordons, Campbell, Mercury.		
43. (737) Cal-Dak, Industries, Inc. Little Rock, Ark. Tubular housewares.	Inbound; from points in North Carolina, South Carolina, and Alabama, to Little Rock. Shipper receives over 100,000 pounds a year. Outbound, from Little Rock, to points in the Southeastern States. Ships in excess of 1,000,000 pounds a year.	Inbound, ET & WNC and Campbell. Outbound, T.I.M.E., Gordons, Campbell, ABF, ET & WNC, Ryder, Mercury, Thurston, Bowman, Central.	Wants faster deliveries and easier tracing of shipments. Allows 7 to 10 days lead time from to Florida, 5 to 7 days to the Carolinas, and 3 to 5 days to Georgia and Alabama.	Bowman, Jones and Red Ball. T.I.M.E., Gordons, and Transocean offer direct service to Atlanta, Ga. Gordon and Campbell offer direct service to Birmingham and Bessemer, Ala. T.I.M.E. offers direct line service to Atlanta, Ga.
44. (738) Virco Manufacturing Corporation, Conway, Ark. School furniture.	From Conway to points in North Caroline, South Carolina, Georgia, Florida, Alabama, and Tennessee. Shipper transports approximately 65,000 to 70,000 pounds a month. Shipments weigh from 100 to 3,700 pounds with an average weight of 800 pounds.	Holt Interchanging with ET & WNC, T.I.M.E., Central, Overnight, Tamiami, Thurston, Ryder, Georgia Highway, Carolina Freight, M & D, Atlas, Roadway.	Desires joint-line service of Holt from Conway to Little Rock and Bowman from Little Rock to points in southeastern States. Supports Jones to Atlanta, Ga. and Birmingham, Ala. Allows lead time from Conway to Florida points of 7 to 12 days; Atlanta 3 to 5 days, Eastern Seaboard, 5 to 8 days. Needs 3 to 5 days service to Florida and 3 days to all other areas.	Bowman and Jones. T.I.M.E. & East Texas offer direct service from Little Rock to Birmingham and Atlanta. Ryder serves points in Florida from Little Rock through the Memphis gateway.
45. (739) Chamberlin School Furniture Inc., Conway, Ark. School Furniture.	From Conway LTL shipments to points in Alabama (30,000 pounds a year), Georgia (30,000 pounds a year), Florida (20,000 pounds a year), South Carolina, New York and New Jersey (private carriage 80,000 pounds some TL), North Carolina (200,000 pounds handled in private equipment and some LTL).	Holt to Little Rock and interline with ET & WNC, T.I.M.E., Superior, R.D., Central, Springmoler, Atlas, Bowman, Pic-Walsh, Mail.	Wants single-line service from Conway so it does not have to use its own equipment. Present joint-line service too slow. Allows lead time of 7 to 10-days to the points in the northeast, 7 to 10-days to Florida and 4 to 5-days to points in the Southeast. Needs 3 to 4-day service to all points.	Bowman and Jones. Presently shipping 80 percent of its volume by private carriage. Direct service available from Conway to Memphis gateway, which shipper didn't know about. Mercury can also serve direct from Conway to Memphis.
46. (74w) Gravette Shelling Company. Gravette, Ark. Black walnut kernels, processed shells, metal containers and paper bags.	Inbound, Mobile Ala. to Gravette (125,000 pounds a year). Outbound, Gravette to Miami, Fla. (10,000 pounds every 6 weeks in TL lots).	Jones, Campbell, Ryder Central.	Wants faster service. Wants 2-day service between Atlanta and Gravette and between Atlanta and Mobile.	Jones. Shipper is satisfied with Ryder's service. See shipper under Missouri heading. Also, 17. (711).
47. (745) Saxon's Aluminum Irrigation Company, Fayetteville, Ark. Irrigation motors and pumps.	From Atlanta to Springdale, Ark. No figures given as to volume or frequencies.	Transcon.	Wants faster service.	Jones.
48. (746) Carpet Land Springdale, Ark. Carpets and padding.	From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives 6,500 pounds of LTL shipments a month from Atlanta and the same from Birmingham.	Jones from Dallas, Georgia Highway, Campbell, Red Ball, ET & WNC, T.I.M.E.	Transit time important because shipper's store is small and it cannot maintain a large inventory. Wants faster service. Average transit time from Georgia is 8.3 days including weekends. Wants 2-day service from Birmingham and Atlanta to Springdale.	Jones. Shipper wants a two-line haul in place of a three-line haul. However a two-line haul is presently available to shipper with Ryder-Jones.
49. (75i) The Grapette Company, Inc. Camden, Ark. Concentrates and dry chemicals.	From Camden to points in North Carolina, South Carolina, Florida, Tennessee, Alabama, Virginia, Maryland, Georgia, New York, and New Jersey and to Washington, D.C. ships approximately 25 shipments a month to the above States. Shipments average 400 pounds. Also receives grape juice from New York, and orange juice from Florida (15 shipments a month weighing 10,000 pounds).	Southwestern, interlining with ET&WNC, Overnight, Gordon, Thurston, Rutherford, Central, Preston, Bell, Mail, and Ryder Railroads & T.I.M.E on inbound shipments.	Complaints of undue delays in transit with the available joint-line service. Single-line service would minimize damage. Allowing 1 to 7 days lead time on shipments to Alabama, Tennessee, the Carolinas, Florida, Virginia and Maryland	Bowman.
50. (752) James H. Matthews and Company, Searcy, Ark. Bronze cemetery memorials.	From Searcy to points in Alabama, Florida, Georgia, and Tennessee. Ships 35,000 pounds a month to above States. Each shipments is LTL and weighs less than 100 pounds.	Powell interlining with Ryder, Transcon, Bowman, Herrin, Gordons, Midsouth, Pulaski, Hoover, ETNF, Mail, Soufo, Robinson, Skyline, Baggett, ET&WNC, Campbell, and Viking.	Supports Bowman from Little Rock, Ark. to points in destination territory because it wants faster delivery allowing lead time to Florida of 5 to 7 days, Georgia, 4 to 5 days, Alabama, 4 to 5 days, and the Carolinas, 5 to 7 days. Needs 2-day service to Georgia and Alabama, and 3-day service to the Carolinas and Florida.	Bowman. Already has numerous two-line service. Shipper kept no record of specific complaints.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
51. (778?) Freeway Co. Fayetteville, Ark. Electrical switches, fuses and pole line equipment.	From Fayetteville to Atlanta, Ga., Greenville, Miss. and Birmingham, Ala. Ships 3,000 to 4,000 pounds every 2 weeks to Atlanta (LTL) and 300 to 400 pounds two time a week to Birmingham. (LTL) has occasional shipments to Greenville.	Jones, Red Ball, Campbell.	Too many delays with present service. Wants second-morning service to Atlanta and Birmingham.	Red Ball, Jones. Shipper has no complaints with present service to Greenville (single-line). Campbell offers single-line service to Birmingham.
52. (784) Democrate Printing and Lithographing Company, Little Rock, Ark. Catalogues, magazines and books.	From Little Rock to points in North Carolina, Florida, Georgia, Alabama, South Carolina, and Virginia. Ships about 5,000 to 10,000 pounds a month to the above areas. Weight may range up to 12,000 pounds.	ABF, Campbell, Cordova, E.T.M.F. Hall, Ryder, Thurston, Jones, Tamiami, ETAMC, Huckabee, Bowman, White, B.C. Masters, Overnight, and Central.	Wants faster transit time. Wants second-third-morning service to Florida, and 1- or 2-day service to Alabama and Georgia, and 2- or 3-day service to Virginia and North Carolina.	Bowman, Jones. Jones interlining at Memphis with Bowman, can serve the Carolinas and Alabama.
53. (771) Tobler Corporation, Hope, Ark. Protective coatings for plastic.	From Hope to the Atlanta, Ga. gateway. Ships 2 or 3 times a week about 1,700 pounds a shipment.	Midway-Little Rock-ETAMC, T.I.M.E. Strickland, Memphis, Tramcon.	Allows 7 to 10 days lead time expects 2-day service to Atlanta with Strickland.	Strickland. If application were granted, would still be a 2-line haul. Likes Strickland's service.
54. (779) Hardwood plastic products, Fort Smith, Ark. Molded chairs and desks.	From Fort Smith to Birmingham, Ala. Ships 20,000 and 30,000 pounds a week to Birmingham.	Gordons, Jones, Cole.	Wants the convenience of a single-line service. Has complaints with Cole's service. Wants faster deliveries. Wants second-morning service to Birmingham.	Jones. Shipper dissatisfied with Jones interchanging with Cole, but there are 3 other carriers Jones can interchange with that have been untried.
55. (776) Ralph Jones Company, Inc. Siloam Springs, Ark. Plastic pipe and fittings.	From Siloam Springs to points in Alabama and Georgia. Shipped 75,000 to 100,000 pounds to above areas in 1966. Expects to ship 200,000 pounds in 1967. The traffic is LTL. Average weigh of each shipment is between 2,100 and 3,000 pounds.	Ruble, Gordons, Jones, Campbell, Ark-Best.	Wants faster transit time and single-line service. Wants 2-day service to Atlanta and Birmingham.	Jones.
56. (778) Sterling Stores Co., Inc. and Cash Wholesale Co., Inc. Little Rock, Ark. General merchandise.	From points in New Jersey, North Carolina, South Carolina, Georgia, and Tennessee to Little Rock.	Merchants Interlining with T.I.M.E., Thurston-PCV, Atlas, G.M.E., Campbell, ETAMC, Old Dominion, Heims, Federal, Dixie, Mercury, Roadway, Overnite, NTL, Ryder, Tramcon, Catawba.	Wants faster transit time. Wants single-line service to avoid tracing problems. Average transit time about 6 days including weekends. Wants proposed 3-day service.	Bowman. Uses private carriage Jones' service from Memphis is good.
57. (778) Watton Stores Bentonville, Ark. General merchandise.	From the Atlanta, Ga. and Birmingham, Ala. gateways to shippers stores located at Bentonville, Springfield, Siloam Springs, and Rogers, Ark. All shipments are LTL averaging about 200 pounds.	Jones, ABF, Campbell, Red Ball, Overnite, T.I.M.E Ga. M'way, Caton, REA, Thurston, Ryder, TCT, PNL, Gordons, Murdock, Harper, Barnes, Cope, Thurston, Huckabee, Hannis, Tramcon, Pike, ETAMC, BC, Meadors, Helms, Ruble, Standard, Baggett, West, B.C.W. AAA Highway.	Wants less in-transit. Average transit time about 5 days.	Jones. Shipper has not reviewed the service of many of its origin carriers.
58. (781) Fine Truck Line, Fort Smith, Ark. General freight.	From Fort Smith to Atlanta, Ga. and Birmingham, Ala. (and beyond). Between 500 and 1,000 pounds handled to above points and beyond each day.	Gordons, Campbell, Mercury, ABF, Jones.	Wants to interline directly with Jones. Presently getting inconsistent second-day service. Wants consistent 2-day service to Atlanta and Birmingham.	Jones.
59. (784) Standard Register Company, Fayetteville, Ark. Printed forms and paper.	From Fayetteville to points in Florida. Shipped $1,750 pounds to Florida during 1966.	Jones, Campbell, Ryder, and Tramcon Hall, Central, Tamiami, Red Ball, Terminal.	Jones would give shipper 2-day service to Atlanta gateway. Wants single-line service to Atlanta. Average transit time 7.2 days including weekends. Allowing 4 days lead time to Atlanta.	Jones. Shipper has a wide choice of existing services through many gateways.
60. (787) Allen Canning Company, Siloam Springs, Ark. Canned foods.	From Siloam Springs to Atlanta, Ga. and Birmingham, Ala. Expected to ship 4,000,000 pounds of food to above points in 1967. Shipped 2,199,889 pounds in 1966.	Colonial.	Colonial does not have enough equipment to meet demands. Shipper requires refrigerated service.	Jones. Colonial offers direct service. Shipper waited as long as 2 weeks to get equipment from Colonial. Shipper needs about 10 trailers a week.
61. (791) Wabb Wheel, Siloam Springs, Ark. Inbound—truck trailer axles. Outbound—wheels, brake drums, truck and trailer axle assemblies.	From Montgomery, Ala. to Siloam Springs, shipper receives three shipments a year each weighing from 72,000 to 90,000 pounds. From Siloam Springs to points in Alabama, Georgia and Florida. Ships in excess of 399,000 pounds a month.	Campbell, Jones, Tramcon, ABF, Bowman, Ryder, Caton, A.A.A. Ruble and Ark.-Best.	Wants a more direct and a faster service. Wants second-morning service to Atlanta.	Jones. Campbell's route is very circuitous.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
63. (799) Southern Folder & Index Company, El Dorado, Ark. Files, folders and indexes.	From El Dorado to Greenville, Miss.; Atlanta, Ga., and Birmingham, Ala. Ships once a week to Greenville, (100-330 pounds) several shipments a month to Atlanta, (minimum to 4,000 pounds) and ships twice a month to Birmingham (minimum to 3,000 pounds).	Red Ball, Herrin.	Single-line service would avoid tracing problems. Wants overnight service to Greenville and second-day service to Atlanta and Birmingham.	Red Ball.
64. (800) Riverside Furniture Corporation and Twin Rivers Furniture Corporation, both of Fort Smith, Ark. Furniture.	From Fort Smith to Birmingham, Ala., and Atlanta, Ga., TL lots and LTL. Ships between 70,000 and 100,000 pounds a month to above points.	Campbell and Mercury.	Customer want faster deliveries. Wants second-morning service to Atlanta and Birmingham.	Jones. Gordons appears to have discontinued offering single-line service to this shipper. Riverside is affiliated with Ark-Best Freight. Has joint-line service and shipper has no specific complaints.
64. (837) Williams Auto & Industrial Supply, Fort Smith, Ark. Automotive and industrial supplies.	From Atlanta, Ga. and Birmingham, Ala. to Fort Smith (4,000 pounds a month).	Gordon, Mercury, Campbell, Bowman, Harmin, ETWF, McCord and T.I.M.E.	Average transit time from Birmingham is 43 days including weekends.	Jones. Gordons offers single-line service. Campbell offers single-line service from Birmingham.
65. (809) Arkansas Wholesale Dry Goods and Variety Store, Inc. Springdale, Ark. Piece goods and clothing.	From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives about 100 LTL shipments from Atlanta a year.	Jones, ABF, Campbell, Red Ball, Ryder, Huckabee, T.I.M.E., Overnite, ETWF, Thurston, Roadway, Northern, Transcon, Harmin, Gordons, Harper.	Needs fast delivery service as it can sell close-out, before the market for the goods declines. Wants second morning delivery from Atlanta and Birmingham. Average transit time is 4 to 5 days.	Jones. Proposed service would still be joint-line. Shipper has several joint-line services currently available with Jones as the delivering carrier.
66. (810) Martin Company Inc. Springdale, Ark. Piece goods rugs, towels, clothing.	From Atlanta, Ga. and Birmingham, Ala. gateways to points in Arkansas. Receives approximately 900 LTL shipments a year.	Jones, ABF, Red Ball, Roadway, Campbell, Mercury, Waldron, Hanes, Hoover, Bowman, ETLWMC, STC, Carolina, T.I.M.E., TCT, Thurston, Gordons, Stasi, GMX, Smith, Overnite, SFN, and Huckabee.	Needs faster delivery as it can have close-out sales at the end of the season. Transit study only represents a small portion of the traffic. Current transit times range from 1 to 8 days.	Jones.
67. (811) Whitlock Manufacturing Company, Inc. Springdale, Ark. Cotton piece goods.	From Atlanta, Ga. to Springdale. Receives LTL shipments from Atlanta about twice a month.	T.I.M.E., Jones, Roadway, Thurston.	Wants single-line service from Atlanta. Shipper not satisfied with 4 working day service. Wants 3-day service. Average transit time from the Carolinas is 5 days.	Jones. Gateway on most shipments has been to Memphis. Granting of the application would permit Jones to gateway at Atlanta instead of Memphis. Ryder, Jones service described as reasonable.
68. (813) Metal Stamping Corporation, Conway, Ark. Vending machines.	From Conway to points in Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee, Virginia, Maryland, and New Jersey. Ships between 40,000-50,000 pounds LTL to above points a month, weighing between 140 and 4,000 pounds. The average shipment weighs 1,000 pounds.	Holt, ETLWMC, Strickland, T.I.M.E. Gordons, Red Ball, ABF, Central, AA, GMX, Huckabee, Tamiami, Overnite, Helms, Baggett, Transcon, Fuller, Brown, Thurston, Terminal T., Ryder, Mercury and Atlas.	Wants a faster two-line haul rather than existing three-line haul. This would make tracing easier.	Bowman. Bowman proposes service from Little Rock. Shipper would use Holt from Conway to Little Rock. Several carriers have authority from Conway direct to the Memphis gateway. Also several carriers offer two-line service from Conway to Atlanta.
69. (815) Van Buren.	See shipper under Oklahoma heading.			
70. (818) Elkhart products Corp. Fayetteville, Ark. Copper solder, joint fittings, parts, and pipe connections.	From Fayetteville to Atlanta, Ga., Charlotte, N.C., and Tampa and Fort Lauderdale, Fla. Ships LTL 100,000 pounds a year to Atlanta, 30,000 pounds to Charlotte, 50,000 pounds to Tampa and Fort Lauderdale, and 200,000 pounds a year to points on the east coast.	Jones, Bowman, Ryder, Thurston, Gordons, ETLWMC, and Campbell.	Wants second-day delivery to Birmingham and Atlanta.	Jones. Service to Carolinas is presently a two-line haul. If application were approved it would still be a two-line haul.
71. (821) Lewis Brothers, Fayetteville, Ark. Furniture, appliances and general merchandise.	From Atlanta, Ga. and Birmingham, Ala. gateways to Fayetteville. Receives about 8,000 pounds a year in LTL lots.	Thurston, ETLWMC, Tallant, MoPac, Caldwell, ABF-RCA, Gordons, Georgia Highway, Campbell, Jones Standard, R.C. Ala. Hy. Bowman, T.I.M.E. Dixie, Transcon, Helms.	Wants a single-line service from Atlanta and Birmingham. Average transit time from the Carolinas was 4.5 days including weekends; Memphis 2 days, and 3 days to Georgia. Wants second-morning service from Atlanta and Birmingham to Fayetteville.	Jones. Jones over Memphis can currently offer the proposed two-line service.
72. (827) Fayetteville, Ark.	See shipper under Oklahoma heading.			
73. (828) Magnolia, Ark.	See shipper under Oklahoma heading.			
74. (833) The Hurley Company, Camden, Ark.	From Camden to New York, N.Y. During 1966, shipper transported 119,450 pounds to New York. Average shipments weighs 2,500 to 3,000 pounds.	Atlas, Southeastern, and Powell.	Wants a faster delivery service. Allows lead time of 4 to 6 days from Camden to New York.	Bowman. Witness states that he is satisfied with existing service but would prefer a single-line service.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
78. (894) Rogers Hardware & Lumber Company, Nimmons, Ark. Glass and garage doors.	From Atlanta, Ga. to Nimmons, and from Hialeah, Fla. to Nimmons. Receives about eight LTL shipments a month from the above points.	ETMF, Jones, Ryder, and Campbell.	Because of competitive reasons, shipper needs quick transit. Wants 2-day service from Atlanta. Transit time was shown to be between 2 and 4 days from Atlanta to Little Rock where shipments are interlined for delivery to Nimmons.	Jones. Witness admitted present service was adequate.
79. (940) Fort Smith Sash & Door Inc. American Home Builders Supply Corp., both of Fort Smith, Ark. Moldings and screens.	From Tifton, Ga. to Fort Smith (5,000 pounds every 4 to 6 weeks). From Conyers, Ga. to Fort Smith (one shipment every 4 to 6 weeks ranging 1,500 pounds). Shipper states it would receive 4,000 pounds every 2 weeks from Miami, Fla., but because of slow delivery service it is currently using other sources.	Georgia Highway, Gardens, Dunns, Carolina, T.I.M.E., Mercury, Transcon, and Campbell.	Average transit time is 5 days including weekends. Wants second-day service from Atlanta & Birmingham to Fort Smith.	Jones. Jones proposes to serve to and from Atlanta and thus shipper would still have to rely on a joint-line service.
77. (943) General Business Forms Inc. Huntersville, Ark. Business forms.	From Huntersville to Atlanta, Ga. and Birmingham, Ala. Shipments are LTL weighing an average of 150 pounds.	Jones, ABF, Campbell, Red Ball, Ryder, Bowman, ACE.	Wants a single-line service. Transit time from 2 to 5 days including weekends. Allows 4 to 6 days total time. Wants second day service to Atlanta and Birmingham.	Jones. Shipper routes about 75 percent of its outbound traffic. Campbell offers direct service to Birmingham and Mobile. Transit time appears to be reasonable.
78. (944) Citation Mfg. Co., Inc., Silcox Springs, Ark. Car washing equipment.	From Silcox Springs to Birmingham, Ala. and Atlanta, Ga. (as gateways). From 6/25/64 to 12/30/64, shipper transported 9 shipments to points in Florida, Alabama and Georgia with an average weight of about 400 pounds. Shipper moves 3 to 4 shipments a month weighing about 600 to 800 pounds to Birmingham. To Florida, shipper moves about 1 or 2 shipments weighing between 200 and 4,000 pounds.	Campbell, Ryder, Red Ball, Gardens, Bowman, Georgia Highway.	Wants single-line service to Atlanta and Birmingham in order to speed up deliveries. Wants second-morning delivery to Atlanta and Birmingham.	Jones. Shipper has not tried the services of several joint-line carriers over the Birmingham gateway.
79. (947) Tone Office Supply and Furniture Co. and Tone Printing Company, Fort Smith, Ark. Office supplies.	From Marietta, Ga., Birmingham, Ala., and points in North and South Carolina to Fort Smith. Receives 6 to 8 shipments a year from Marietta with each weighing 250 to 300 pounds; receives 4 to 6 shipments a year from Birmingham with each weighing between 300 and 500 pounds; and receives 2 shipments a month from the Carolinas with each weighing 400 to 600 pounds.	Gardens, JHL, Ryder, Mercury, ETMC, Campbell, and Overnite.	Wants faster single-line service. Average transit time 4 days excluding weekends. Wants 2-day service from Atlanta and Birmingham and 1-day service from Spartanburg, S.C. to Atlanta.	Jones. Five or six motor carriers operate between Memphis and Fort Smith. Shipper has never used the Memphis gateway. Consolidated Freightways offers single-line service.
80. (950) Ruskin Upholstery Supply, Inc., Little Rock, Ark. Material.	From Atlanta, Ga. and Birmingham, Ala. as gateways to Little Rock. Receives LTL shipments from points in the East through Atlanta. Each shipment weighs about 150 pounds.	Freight Forwarders, Roadway, Thurston, Ryder, Atlas, ETSMC, Mercury, Superior, Garrison, Eastern, TCT, T.I.M.E., Campbell, Smith, Overnight, ETMF, Strickland, Consolidated, Cole, Transcon, Wilson, Georgia Highway, Red Ball, Dixie, Southwestern, Bowman, Midland, Long.	Wants faster single-line service from Atlanta and Birmingham. Jones promises overnight delivery. Shipper introduced a transit time study which indicates generally that the transit times shown are not satisfactory.	Bowman and Jones. Strickland offers single-line service from New York and New Jersey. Mercury seems to be giving fairly consistent overnight service from Memphis. Roadway 2-3 days from the Carolinas.
81. (951) Walden, Williams, & Lisk, Fort Smith, Ark. Printed items.	From Fort Smith to points in Georgia (1,500 to 2,250 pounds moves a week), Alabama (750 to 1,500 pounds a week), Florida (1,000 to 2,000 pounds a week), and to North and South Carolina (1,000 pounds a week). Supporting Jones to Atlanta and Birmingham gateways.	Mercury-interlining with other carriers.	Wants second-morning service from Ft. Smith to Atlanta and Birmingham.	Jones. Shipper has no specific complaints with existing service.
82. (954) Vest Bend Company, Sheridan, Ark. Stainless steel cookware.	From Sheridan to Atlanta, Ga., Columbia, S.C. Kingston, N.C., Birmingham, Ala. and Knoxville, Chattanooga and Nashville, Tenn. It made 47 shipments to the above points during 1964. Ranging from 200 to 1,200 pounds (LTL). Also from Sheridan to Montgomery & Mobile, Ala., Jacksonville, Winterhaven, and Pensacola, Fla., and Brunswick and Augusta, Ga., shipper made 65 shipments collectively in 1964, ranging from 200 to 8,000 pounds (LTL).	Sheridan interchanging at Little Rock with: ETMF, ETSMC, Gardens, Campbell, T.I.M.E., Cole, Delta, Harper, Baggett, Central, and Buckaboo.	Wants a fast reliable, single-line service from Little Rock. Wants a two-line haul service available.	Bowman. Shipper has numerous joint-line services available and has no specific complaints about them.
83. (959) Rockwell Manufacturing Company, Pittsburg, Pa. Parking meters and valves.	From shipper's plants at Russellville, Ark and Sulphur Springs, Tex. to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Only volume figures given are from Sulphur Springs (about 180,000 pounds a month), to the Southeast. Ships to Atlanta from Sulphur Springs three to four times a week (LTL).	ABF, Transcon, Overnite, ETT, Mercury, ETMF, Ryder, ETSMC.	Wants single-line service.	Red Ball. Shipper states that Red Ball's service would be more convenient. Jones can perform some single-line service. Shipper has several two-line haul carriers available. There are no specific complaints about transit time.
84. (933) Power Truck Line, Inc., Searcy, Ark. Common carrier. Belt Truck Line, Inc., Conway, Ark. Common carrier.	No specifics given but involves transporting general commodities to points in Arkansas, and Memphis, Tenn.	Red Ball, ABF, Central, Tamiami, Campbell, ETMF, Gardens, T.I.M.E., Ryder.	Wants to interline with applicant.	Bowman.

Summary of evidence of supporting shippers—Continued

COLORADO

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (590) Sanacrete Corporation, Denver, Colo. Lugg ge.	From Denver to Atlanta, Ga. (3 million pounds a year) from shipper's Atlanta warehouse to points in Louisiana and Mississippi (150,000 pounds a year). Each shipment weighs about 135 pounds. From Birmingham, Ala., to Atlanta it ships 10,000 pounds a year.	Yellow, Colo, Ryder, Georgia Hwy. Navajo, Jordons, [illegible] Highway.	Wants faster and consistent single-line service. Allows 7 days for delivery.	Red Ball. Several existing carriers offer single-line service from Atlanta to points in the destination States.
2. (438) Gardner Denver Co., Denver, Colo. Mining and construction equipment.	From Denver to Atlanta, Ga., and Birmingham, Ala., and return. Outbound about $4,000 pounds monthly and inbound about 9 shipments monthly weighing 175 pounds each.	Watson-Wilson, IML, LeeWay, P.I.E., REA., Red Ball.	Prefers direct single-line service. Shipper states that average transit time is 6 days, and that transit times now range between 3 days and 11 days.	Red Ball. Watson-Wilson offers single-line service from Denver to Atlanta. No specific complaints.
3. (682) Electron Corporation, Littleton, Colo. Iron and steel shafting, pulleys and sheaves.	From Littleton to Atlanta, Ga., and Birmingham, Ala. About 681,000 pounds and 10,370 pounds shipped to respective cities yearly.	Red Ball, Watson-Wilson, Denver-Chicago, Plate.	Wants faster service. Prefers single-line service.	Red Ball.
4. (683) Gates Rubber Co., Denver, Colo. Rubber products.	From Denver, Natchez, Miss., and Dallas, Tex., to Atlanta, Ga., and Birmingham, Ala.; and from Atlanta, to Birmingham. Between 100,000 pounds and 4.9 million pounds moves yearly. TL and LTL.	McLean, Mercury, Arkansas Best, IML, I.M.F.S., P.I.E., Watson, Ringsby, D-C, Gordons, Terminal, Ryder, Atlanta Mtr., Colo, AAA, Roadway, ICX ...M.I., Transcon, Ryder, Watson-Wilson.	Inconsistency of existing services. Wants between 3 and 5 days service. Average transit time now is 8 days including weekends.	Red Ball. Watson-Wilson renders shipper in single-line service to Atlanta. Transit study time does not include all shipments during period covered.
5. (720) Ampex Corporation, Colorado Springs, Colo. Tape recorders and parts thereof.	From Colorado Springs to Birmingham, ... (Sept. 1966: 13 shipments, total weight 18,352 pounds) and Atlanta, Ga. (Sept. 1966: 5 shipments total weight 1,962 pounds).	...M.I., Transcon, Ryder, Watson-Wilson.	Wants faster single-line service. Less chance of damage to its product if it had single-line service. Wants third-morning service to Birmingham and Atlanta.	Red Ball. No evidence of poor existing service.
6. (721) Dana Parts Company, Pueblo, Colo. Internal combustion engine parts.	From Colorado Springs, Colo. to Atlanta, Ga. (89,804 pounds a year) and Birmingham, Ala. (7,794 pounds a year).	RB interlining with Yellow Transit, R.E.A., Navajo, and Denver-Chicago.	Present joint-line service essentially too slow.	Red Ball. No evidence of poor service shown.

CONNECTICUT

1. (76) Jewett City.	See shipper under Massachusetts heading.			
2. (173) American Cyanamide Company, Inc., Wayne, N.J. Chemicals, dye intermediates, consumer toiletries, plastic molding compounds, synthetic resins, veterinary biologicals, drugs and medicines.	From Waterbury, Wallingford, and Bridgeport, Conn.; Bound Brook and Princeton, N.J.; Springfield, Mass.; and Pearl River, N.Y., shipments move to shipper's warehouse at Dallas, Tex. Protective service is required on one half of the movements from Princeton and on 5 percent of the movements from Pearl River. About 1.2 million pounds a year moves from Bound Brook to Dallas; 3.8 million pounds from Springfield; 1 million pounds from Wallingford; 225,000 pounds from Princeton; and 2.6 million pounds from Pearl River. Most of this traffic moves in TL lots, but shipper has a consistent, though less frequent, need for LTL service. Shipper expects a 13 percent annual increase in its business through 1971.	Shipper uses the services of motor common carriers, freight forwarders, rails and coastwise lines and sealand service for the movements of products outbound from eastern points to Dallas. Strickland and Roadway have been used in service.	Shipper requires split pickup service at Princeton and Pearl River on traffic to Dallas. It would like to plan its inventory based on a 5-day service on TL movements from New England, New York, and New Jersey and Dallas. However, shipper must allow 9 days for delivery to Dallas. Transit time is important because fast, ... cause disruptions in the manufacturing cycle. If the applications are granted shipper will terminate much of its use of transportation ... other than motor carrier. Shipper indicates that Strickland does not offer consistent service and that Roadway does not render satisfactory transit times. On one TL movement handled by Roadway the transit time was 9 days including a Saturday, Sunday, and holiday.	Bowman and Johnson. Shipper indicated that it understood that Johnson has refrigerated equipment and that if it is granted the authority sought Bowman will relinquish refrigerated service. It uses applicants' services and describes them as satisfactory. Johnson provides shipper temperature controlled service. It can serve all of the origin points while Bowman cannot serve Wallingford, Waterbury, Bridgeport, and Springfield. Seeland has been used on all the traffic requiring temperature control from Princeton and Pearl River in the 12 months before the hearing. Shipper has tried Akar's temperature controlled joint-line service between the East and New England on the one hand, and, on the other Dallas and found it satisfactory. Johnson.
3. (892) Dushan-Bush, Inc., West Hartford, Conn. Air-conditioning and refrigeration equipment.	From West Hartford to points in Texas, Louisiana and Mississippi. Shipper moves about 20,000 pounds monthly of LTL shipments to Baton Rouge, Monroe, and Shreveport, La. and Jackson, Miss.	Johnson, Roadway, Oxnel, Central, Aimes, Sale, Ryder, Deaton, Merchants, ETAMBC, Texas & Pac, West, Gordons, Red Ball, Akers	Wants faster single-line service to Mississippi and Louisiana.	
4. (936) Rockville, Conn.	See shipper under Massachusetts heading			

Summary of evidence of supporting shippers—Continued

DELAWARE

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (926) Rockford, Del.	See shipper under Massachusetts heading.			

FLORIDA

1. (26) Pensacola, Fla.	See shipper under South Carolina heading.			
2. (100) Central Aircraft Corporation, Miami, Fla. Aircraft engines and parts.	Outbound shipments move from Miami to Dallas and Houston, Tex. and through Dallas to points in California. Inbound shipper receives movements from Dallas and Houston and from California as well as from other points. Between 1/1/56 and 6/10/56, shipper had 26 movements to Dallas of which 22 were handled by Bowman and 6 were handled by air lines. It also had two shipments to two California points. One half of the airline traffic would be tendered to Bowman if its application is granted. Shipper receives about three inbound shipments a week by motor carrier and about five inbound shipments a month from Dallas and Houston.	Bowman, Ryder and Central deliver inbound traffic. Bowman originates shipper's outbound traffic.	Shipper wants 3- or 4-day service between Dallas and Miami and 7- or 8-day service between Miami and points in California. Time in transit is important because stock is limited and repairs to airplane engines have to be made as rapidly as possible in order to avoid an excessive loss of revenue. Shipper was not satisfied with Ryder's pick-up service and with transit times on the carrier's inbound interline service. Also, in 1953 Ryder misleid an engine for about a week.	Bowman. Shipper does not control the routing on inbound shipments. It did not cite any specific instance of unsatisfactory service outbound from Miami to Dallas or to points in California. Shipper has very little traffic moving outbound to Houston. It is interested primarily in service of inbound traffic.
3. (213) Lakeland, Fla.	See shipper under Georgia heading.			
4. (598) W. Bruce, Inc., Pagebar, Inc., Miami, Fla. Metal connectors and cabinets.	From Miami to points in Arkansas, Louisiana, Mississippi, Missouri, Kansas and Texas. About 300,000 pounds every 4 months.	Bowman, Ryder, Central, Terminal.	Difficulty in obtaining pickups, and objects to number of transfers of the freight in transit.	Bowman. Shipper objects to its freight being broken at more than one point.
5. (594) Tandy Leather Co. & American Handicraft., Miami, Fla. Crafts & leather supplies	From Fort Worth, Tex., to Miami. Approximately between 12 and 20 shipments move a month ranging between 200 and 500 pounds.	Bowman, Central, Terminal, Tamiami, East Texas, Ryder, Harris, Red Ball, Transcon.	Joint-line service inadequate.	Bowman.
6. (598) Jennie & Hack, Inc., Miami, Fla. Auto air-conditioners and parts.	From Dallas, Tex., to Miami. About 150,000 pounds moves annually.	Central, Ryder, Transcon, Bowman, Harris, Terminal, Tamiami.	Needs faster service. Wants 5-day service.	Bowman.
7. (845) Sparks Speciality Co., Pensacola, Fla. Tube fittings, valves, tubings, instrumentation equipment and piping accessories.	From Houston, Tex., and Baton Rouge, La., to Pensacola. Shipments range between 15 pounds and 255 pounds.	Mercury, East Texas, Red Ball, MNSR, Central, Georgia, Florida.	Wants faster service. Average days in transit is 7, including weekends. Wants 2-day service.	Bowman, Johnson. Transit time study does not include all shipments.
8. (869) Sinclaird & Valentine Co. Cantonment, Fla. Resin compounds, varnishes, and printing inks.	From Cantonment (Pensacola, Fla.) to Camden, Ark., Memphis, Tenn., Monroe, La., Houston, Texas, and Kansas City, Mo., shipments range between 147 pounds and 33,465 pounds.	G.F.A., Gondona, Southwestern, H. Hall, Mercury, Couch, Harris.	Joint-line service inadequate. Wants 2-day service. Presently allowing between 4 and 5 days load time.	Bowman, Johnson.

Summary of evidence of supporting shippers--Continued

FLORIDA—Continued

Shipper location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
9. (689) Ogasco Coca Cola Bottling Co., Pensacola, Fla. Vending machines and repair parts thereof.	From Kansas City, Mo., to Pensacola. Shipments range between 90 pounds and 4,675 pounds.	Georgia-Florida, Johnson.	Joint-line svc. is inadequate. Wants faster service. Wants 3-day service. Average transit time 6.5 days.	Bowman. Transit time covered 26 percent of traffic for 9-month period in 1966.
10. (754) St. Regis Paper Co., Pensacola, Fla. Paper and paper products.	From Pensacola to Crossett, Ark., Kansas City and Springfield, Mo., Garland, Longview, Port Arthur, and Texarkana, Tex. and Baton Rouge, La. Ships between 300,000 and 350,000 tons a year, mostly in TL lots. A substantial portion of the above tonnage is transported by rail.	Mercury, Harris, Southeastern, Red Ball, Cooper, Alamo, Johnson and Hunt.	Has had substantial delays with joint-line service and has had damage to its product. Wants single-line service which should save one day in transit. At times needs converts vans and flat-bed equipment.	Bowman, Johnson. Shipper witness acknowledged that joint-line service to several points has been good.
11. (782) Rec-o-matic, Inc., Miami, Fla. Chemical solution and pumps.	From Miami, Fla., to Kansas City, Mo., Irving, Fort Worth, and Dallas, Tex., and Little Rock, North Little Rock and West Memphis, Ark. Shipped in excess of 2,000 pounds in a 4-month period to the above points. (LTL).	Bowman, T.I.M.E., Transcon, Gordons.	Present service is too slow. Wants Bowman to have single-line service to get faster deliveries. Needs 3- to 4-day service.	Bowman. There are several gateways shipper has not tried in joint-line service.
12. (788) Arnold Cellophane Corporation, Miami, Fla. Printed packaging materials.	From Miami, Fla. to points in Texas. Ships in excess of 45,000 pounds a month (LTL). Each shipment weighs between 1,200 and 4,500 pounds.	Bowman interchanging with Transcon, T.I.M.E., Gordons, ETMT, Ryder.	Present service is too slow. Wants Bowman to have single-line service. Wants 4-day service to Houston.	Bowman.
13. (807) Sheila Shine Inc., Miami, Fla. Stainless steel cleaning compound in cans.	From Miami, Fla., to points in Arkansas, Louisiana, Missouri, Mississippi, Texas, and Kansas City, Kans. Has several distributors and ships to each one about twice monthly. Shipments weigh from a minimum to 3,000 pounds.	Bowman interlining with other unnamed carriers at Atlanta.	Wants faster delivery and less damage.	Bowman. It appears shipper has very few complaints with existing joint-line service.
14. (819) Shelley Mfg. Company, Miami, Fla. Plexiglass lids, leveling dispensers.	From Kansas City, Mo. to Miami. Receives two shipments a month averaging 100 pounds. From Miami to points in Louisiana (2 shipments a week), Mississippi (2 a week), Missouri (2 a week), Kansas (1 a week), and Texas (20 shipments in 1966). Shipments range from 100 to 3,000 pounds, averaging between 500 and 900 pounds.	Ryder, Bowman, Terminal, Gordons.	Inbound - keeps no inventory; therefore, it needs fast reliable service. Present service too slow. Wants 3- or 4-day service from Miami to Houston, Tex., and to Mississippi, and Louisiana points, 4-day service to other Texas points and Missouri.	Bowman. Presently has two-line service to most points with deliveries made in 3 or 4 days.
15. (820) Pensacola, Miami, and Orlando, Fla.	See shipper under Alabama heading.			

Summary of evidence of supporting shippers—Continued

GEORGIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (1) Mead Packaging Company, Atlanta, Ga. Paper products	From Atlanta, in LTL and TL quantities 16 million pounds moves by motor carrier annually to Kansas City and to specified points in Arkansas, Texas, and Louisiana.	Roadway, East Texas, and Transcon direct to Southwest points. Decatur, Alabama-Georgia Express, Motor Freight Mercury, Morris, East Texas and Red Ball as interline.	Shipper wants direct service so that it can be competitive with other paper producers located in Texas and Louisiana. Existing service is generally described as inadequate because of equipment shortages, backlogs of freight, unbalanced operations, and general indifference.	Morris, Deaton, Red Ball, Strickland, Bowman, and Jones - From Atlanta to New Orleans shipper has available the single-line services of Deaton, Dixie Highway, Johnson and Roadway. Shipper maintains a private fleet which, on occasion it uses for movements to points in Texas. It supports the Bowman and Jones applications for authority to serve from Atlanta to points in Arkansas, Missouri and Kansas.
2. (2) Tom Houston Peanut Co., Columbus, Ga. Salted peanuts, candies, and bakery goods	From Columbus to Houston, Fort Worth, Dallas, and Beaumont, Tex., and Monroe, La. During first 3 months of 1966 it moved, by motor common carrier, 19 shipments to Houston (24,363 pounds); 1 to Fort Worth (45 pounds); 9 to Dallas (12,681 pounds); 5 to Monroe (5,222 pounds); and 1 to Beaumont (1,830 pounds). Expects to ship to Lafayette, Lake Charles, Moore, Baton Rouge, Alexandria, Shreveport and Monroe, La.	Jack Cole-Dixie interlining with Morris, Red Ball or Ryder.	Shipper would like to have transit time improved. The availability of prompt, dependable, and consistent service is important. Shipper indicates that it has frequent complaints with respect to transit times.	Morris. Shipper handles the majority of its traffic from Columbus to points in Texas in its own equipment. It uses for-hire carriers to serve some Texas points and on overflow shipments. Georgia Highway and Baggett offer interline service from Columbus to specified Texas points. Also some other specified carriers offer interline service from Columbus to the four named Texas points.
3. (3) Colonial Shoe Co., Atlanta, Ga. Imported shoes	From New Orleans, La. to Atlanta. Shipper receives at least one shipment each week weighing between 500 and 5,000 pounds.	Cole-Dixie direct. Also, Johnson direct. Morris and Harper interlining.	Shipper is not the receiving second-morning delivery it requires. It refuses to use Johnson because it had a problem with one of this carrier's drivers. Although it receives third-morning service from Morris interlining with Harper, it would like to have Morris render single-line service.	Morris. Ryder's service not tried because this carrier informed shipper that it did not want to make daily pickups on shipper's outbound traffic. Shipper has not inquired about the available single-line service from New Orleans to Atlanta. Deaton and Baggett offer single-line service from New Orleans to Atlanta.
4. (4) Shirley of Atlanta, Inc., Atlanta, Ga. Ladies and children's clothing	From Atlanta to points in Texas, New Mexico, Colorado, Mississippi, Louisiana, Arkansas, Oklahoma, and Memphis, Tenn. Shipper has daily LTL movements. It ships 35,000 pounds a week with the average shipment weighing approximately 115 pounds to points in the above-described territory, which is served by Red Ball. Shipper expects outbound shipments to double within the next 2 years because of an expansion program in which it is engaged.	T.I.M.E., Johnson, Watson, Cole, Ryder, Roadway, East Texas, and Bowman originate the traffic. Cole-Dixie interlining with Red Ball are used on shipments to Louisiana. Deaton is used to Mississippi points.	Shipper has had difficulty in obtaining pickup service from Ryder. Sometimes it takes 4 days to obtain service from this carrier after a request is made. Although Deaton holds authority to serve all points in Mississippi, it would not pick up a shipment destined to State Line, Miss.	Red Ball, Morris, and Johnson. Shipper is satisfied with the service rendered by Roadway to points in Texas. It feels that the 3 or 4-day service rendered by Johnson from Atlanta to New Orleans is not adequate. But, if this carrier is authorized to handle more of shipper's outbound traffic, shipper believes that it would be able to improve the service.
5. (5) Schering Corporation, Chamblee, Ga. Pharmaceuticals	From Chamblee (located within the commercial zone of Atlanta, Ga.) to Jackson and Vicksburg, Miss., and Dallas, Tex. Shipper has one or two LTL shipments weekly to Jackson and Vicksburg. One shipment a month moves from or to Dallas. Its average shipment weighs 100 pounds.	From Atlanta to Jackson shipper uses Dixie, Ryder, Georgia Highway, and REA. Dixie and Ryder are used to Vicksburg. Between Atlanta and Dallas air service used. Ryder has handled approximately 75 percent of the approximately 86 shipments to Jackson and Vicksburg in 1966.	Shipper has difficulty in obtaining pickup service from Ryder. In one instance there was a delay of 7 days before pickup. Shipper prefers single-line service because its pharmaceuticals are susceptible to damage.	Red Ball. Shipper is only interested in motor carrier service to the two named Mississippi points. While Deaton renders single-line service between Atlanta, Jackson, and Vicksburg, shipper has not utilized this service. Although shipper indicates that the service of Georgia Highway Express is adequate, it had not investigated a service involving Georgia Highway Express from Atlanta to Mobile, Ala. and Red Ball.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and reasons
6. (9) Eastman Kodak Company, Chamblee, Ga. Photographic items	From Chamblee shipper annually ships 2.5 million pounds to New Orleans, La., and 840,000 pounds to specified points in Mississippi. It expects its shipments to increase by 25 percent each year through 1971. Its pertinent daily shipments are LTL weighing between 30 and 12,000 pounds. Annually, approximately one-half million pounds is shipped to Jackson, Miss. This represents about 80 percent of the Mississippi traffic. Other Mississippi points include Greenville, Gulfport, Pascagoula, Ocean Springs, Clarksdale, Meridian, and Natchez.	On its shipments to New Orleans shipper uses Georgia-Florida interlining with Central at Mobile, Ala. On the LTL traffic to New Orleans shipper uses Georgia-Florida interlining with Red Ball or Mast at Mobile. Ryder is used on truckload shipments to Birmingham and Memphis and on LTL traffic to Birmingham. East Texas handles the LTL traffic to Memphis. Deaton is used to Jackson. Cole-Dixie was used to Jackson. Johnson is used to Pascagoula, Biloxi, Ocean Springs and Gulfport.	Some of its photographic products require delivery within 24 hours. Delivery beyond 24 hours necessitates the use of refrigerated service. Cole-Dixie, which holds authority from Atlanta to Jackson informed shipper that it would not provide overnight service between these points and that shipper should find another carrier. During a survey period on shipments to Jackson with transit times between 2 and 4 days; Johnson transported a shipment to Tupelo, Miss. rendering next-day service; Deaton rendered 4-day service on shipment to Meridian, Miss.; Johnson rendered 5-day service on a shipment to Keesler Air Force Base, Georgia Highway rendered 6-day service on a shipment to Hattiesburg; and on a shipment to Ocean Springs Johnson rendered 4-day service. The exhibit did not necessarily show all the shipments to these points during the study period and some of the [illegible] included intervening week-ends. Shipper expresses a need for Deaton's proposed single-line next-day service to Baton Rouge and second-morning service to Houston on TL.	Red Ball. The support of the Red Ball application is limited to points in Mississippi and to New Orleans. Shipper considers the service it is receiving to Birmingham and Memphis adequate.
7. (11) Knox Glass, Inc., Forest Park, Ga. (located within the commercial zone of Atlanta, Ga.) Glass container products	From Atlanta TL shipments to Baton Rouge, La. and Houston, Tex. Shipper has movements to Houston and expects to commence shipping to Baton Rouge in June 1966.	On movements to Houston, Deaton originates the shipments and interlines at New Orleans, La., with Missouri Pacific Truck, when the movement to Baton Rouge commences Deaton interlining with Poplarville will be used.		Deaton. The direct-line services of Transcon, Ryder, Roadway, and U.T.A.F. are available from Atlanta to Houston.
8. (16) Justrite Envelope Manufacturing Co., Atlanta, Ga. Envelopes	Outbound shipments move from Atlanta to Jackson and Greenville, Miss. Shreveport, La., Little Rock, El Dorado and Magnolia, Ark. Birmingham, Ala. and Beaumont, Dallas, Houston, Orange, and Waco, Tex. Inbound shipments are received from Akron, Ohio. It has 55 outbound shipments each month with an average weight of 150 to 250 pounds. During a one year period shipper had about 10 shipments to Houston and 10 to Dallas. Shipper has about two shipments a month to Orange. About 15 shipments a year move to Shreveport and about 3 move to El Dorado and Magnolia. Shipper has one shipment a week to Jackson and one shipment a month to Greenville.	Transcon and T.I.M.E. originate the Arkansas shipments. Cole-Dixie is used to Jackson and Birmingham and Gordons handles shipper's Greenville traffic. East Texas handles shippers Texas and Louisiana shipments. Carriers other than Cole-Dixie are also used on shipments to Birmingham.	Present service is assertedly not always fast enough or consistent and time in transit is an important factor. Shipper is not satisfied with the transit time it receives on shipments to Louisiana, Texas, Mississippi, and Arkansas points. Shipper wants second-day service to points in Arkansas, overnight service to Jackson, second-day service to Louisiana, [illegible] second or third-day service to points in Texas. Strickland proposes to meet shipper's needs with respect to these transit times. Shipper had one complaint about the transit time on a shipment to Shreveport handled by East Texas.	Strickland. Shipper was generally satisfied with Cole-Dixie's service to Birmingham. It has not received a complaint on the service to Houston, Dallas and Orange. It did receive one complaint regarding the transit time on a shipment to Beaumont but it could not remember who the carrier was. Although shipper has received some complaints regarding the transit times on shipments to Birmingham, it could not recall which carrier handled the traffic. Shipper did not know how many single-line services were available between Atlanta and Dallas, Waco, and Houston. Strickland, Shipper believes that only Roadway, Transcon and East Texas, are authorized to perform single-line service from Atlanta to Houston and Dallas, but it states that it has been solicited for this traffic by Mercury and United
9. (17) Carpenter Steel Co., Atlanta, Ga. Stainless steel bars	From Atlanta to Houston and Dallas, Tex., and to other unspecified points in Texas. Approximately 100 shipments move during a year to both Dallas and Houston. Almost all the shipments are LTL weighing an average of 500 pounds. During the period of a year approximately 100 orders moved directly to customers located at unspecified points in Texas.	Transcon handles shipper's inbound and outbound traffic. Roadway's service has been utilized to Houston.	Shipper maintains warehouses in Dallas and Houston. Its Atlanta branch has lost business because its Texas warehouses are supplying their customers from shipper's branches in the Pacific Coast because they are receiving better transit time than they can get from Atlanta. The Pacific Coast branches draw their stock from Pennsylvania and Connecticut, and therefore if its Texas customers received stock from Atlanta, shipper would save on freight charges. Shipper would like to regain this business. It feels that [illegible] service would assure it of this business. Shipper received 6-day service from Roadway to Houston and sixth-or-seventh day service from Transcon on a shipment to Houston.	

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
10. (12) Stanford Company, Cowlay, Ga. (Located in the commercial zone of Atlanta, Ga.) Building materials, hardware and floor tile	From Atlanta to Hattiesburg, McComb and Meridian, Miss., Dallas, Tex., and Blytheville, Ark. Shipper receives at least 12 shipments a month from Houston, Tex. It has between 4 and 10 outbound shipments a month with an average weight between 300 and 1,500 pounds. The inbound shipments weigh between 36,000 and 40,000 pounds. They move to either shipper's Atlanta warehouse or directly to shipper's customers located at points in Mississippi, Alabama, and Louisiana. Common carriers handle about one a month to Dallas and shipper uses its own equipment once a month to Dallas.	To Mississippi points shipper uses the services Deaton, Gordons, Dixie, and Ryder. Shipper uses its own equipment in addition to for-hire carriers, on the inbound traffic from Houston. Mercury originates truckload traffic at Houston and interlines it for delivery at Atlanta.	Shipper expresses a need for Strickland's proposed second-day service on the involved traffic.	Strickland. Shipper is not interested in Blytheville since it handles this traffic in its own equipment. It has eight units and uses common carrier to handle overflow traffic. If the application is granted, Strickland would have to [illegible] Jackson on shipments to Hattiesburg and Meridian. Mercury's service interlining to Atlanta from Houston is described as satisfactory. Shipper did not know how many single-line common carriers are authorized to provide service between Atlanta, Houston and Dallas.
11. (13) (a) Panama Products Company, Griffin, Ga. Canned fruits and vegetables (b) Southern Station, Inc., Hampton, Ga. Electrical equipment (c) United Cotton Goods Company, Griffin, Ga., and Laguna, Tex. Cotton textile (d) Southeastern Textile Corporation, Griffin and Cordele, Ga., and Houston, Tex. Textiles (e) Sparta Furniture and Manufacturing Company, Inc., Sparta, Ga. Furniture	(a) Panama's traffic moves from Griffin by rail to points in Texas (mostly to its warehouses located at Dallas, Houston and San Antonio, Tex.) and by private carriage to points in Mississippi, Louisiana, and Arkansas. During 1963, shipper had movements of 800,000 pounds to specified points in Arkansas, 900,000 pounds to Louisiana, 2.1 million pounds to points in Texas. (b) Southern's traffic moves from Hampton to points in Louisiana, Arkansas, and Texas. Between 1/31/64 and 5/12/64 it shipped in private carriage 25,000 pounds to points in Louisiana, 37,000 pounds to Arkansas 86,307 pounds to points in Texas. Between 5/2/64 and 5/20/64 it shipped by common carriage 24,792 pounds to points in Texas, 14,510 pounds to Arkansas, 8,126 pounds to Mississippi, 12,830 to Louisiana. (c) United's traffic moves from Griffin. It ships approximately LTL a day to "all destinations." (d) Southeastern's traffic moves from Griffin and Cordele to points served and proposed to be served by applicant. (e) Sparta's traffic moves from Sparta by rail and motor carrier. It ships about one carload of freight and two TL of freight a week.	Perkins and Ryder originate traffic at Hampton and Griffin. Georgia Highway Express and Akers also originate traffic at Hampton. Overnight originates traffic at Griffin and Hampton. Meadows Freight originates traffic at Sparta. Deaton is used on shipments to points in Mississippi.	(a) Panama would use applicant's services instead of private carriage and rail if Strickland could provide better service. But even if applicant could provide better service only one third of the rail traffic to Texas would be diverted. (b) Southern States does not have backhauls for its private equipment and if Strickland rendered good transit times it would receive shipper's traffic. (d) Southeastern wants better service with respect to transit time. (e) T.I.M.E. had a restriction on furniture and Dixie has a combination rate restriction to two-line hauls to Mississippi and a portion of Louisiana.	All five shippers support Strickland [illegible] Strickland, if its application is granted, would not be able to serve the supporting shipper's plants but it would interline at Atlanta. Inasmuch as applicant also would not be able to service all points in Arkansas, Louisiana and Mississippi, traffic moving to these points would still involve at least three-line hauls. If the application is granted but Strickland does not enter concurrences with the originating carriers, its services would not be used.
12. (20) Atlanta Freight Bureau, Atlanta, Ga.				The witness was presented by Strickland but indicated that no particular applicant is being supported. The Bureau, a civic, nonprofit traffic and transportation service composed of 550 members which are shippers and receivers of freight left to the judgment of the Commission to determine what proposals might be needed to give adequate service between Atlanta, on the one hand, and, on the other points in the territories applicants seek to serve.

Summary of evidence of supporting shippers--Continued

GEORGIA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
13. (21) Fox Manufacturing Company, Rome, Ga. Furniture.	From Rome shipper has about 10 shipments a week to points in Texas, each shipment weighs between 25 and several thousand pounds with the average shipment weighing about 800 pounds. The majority of these shipments move to Dallas, Tex.	Baggett, Georgia Highway, Ryder, and Southern Railway.	Shipper maintains a furniture market and showroom at Dallas and it would like to be able to have samples arrive there on schedule. Baggett has rendered shipper very satisfactory service. Shipper has no direct single-line service from Rome to The Dallas-Fort Worth, Tex., area on furniture. While Ryder holds authority from Rome to Houston, Tex., it generally will not handle shipper's traffic to Houston. Roadway also holds authority from Rome to Houston and Dallas but it will not handle shipper's products. Shipper prefers single-line service because of the fragile nature of furniture. Also tracing would be facilitated and claims would be handled better.	Baggett. Georgia Highway's service is described as satisfactory. This carrier can originate the traffic and interline at Atlanta with any one of a number of carriers holding authority from Atlanta to Dallas. Several carriers also hold single-line authority from Atlanta to Houston and Beaumont. Additionally, Baggett originates the traffic and interlines at Birmingham or Mobile, Ala., with several carriers which hold single-line authority to Houston or Beaumont. This carrier could also interline at New Orleans.
14. (22) General Electric Company, Rome, Ga. Transformers and switches.	From Rome to Houston and Dallas, Tex. During a representative 3 month period about 172,750 pounds in lots of 20,000 pound averages and 14,000 pounds of LTL traffic varying in size from 50 pounds to 7,000 pounds is shipped to the Dallas and Houston areas.	Bell and C & N have single-line authority to Dallas and Houston and are used on an irregular basis. Southern Railway is used on a regular basis. Baggett's services have also been utilized. And, Mercury has been used as a delivering carrier to Dallas and Houston.	Shipper wants to have direct, single-line service between Rome on the one hand, and on the other, Houston and Dallas. It does not use the single-line service of Roadway and Ryder because these carriers assertedly do not provide it with the type of service it needs. Shipper occasionally requires special equipment.	Baggett, Roadway Express and Ryder have single-line authority from Rome to Houston. And, Roadway has single-line authority to Dallas. Shipper was aware that other carriers can interline with Baggett at Birmingham or Mobile and transport its traffic directly to Dallas or Houston. Shipper has utilized the services of Roadway for 13 years but not to points in the southwest on outbound traffic. Ryder maintains a terminal at Rome.
15. (36) Union Camp Corporation, New York, N. Y. Paper products, tall oil products, turpentine, resin, and synthetic plastics.	From shipper's plants located at Savannah, Chamblee (Atlanta) and Stone Mountain, Ga., and from its pulpboard mill at Montgomery, Ala., to points in the Southwest and Kansas City, Mo. From Savannah shipments will move to named representative points in Arkansas, Mississippi, Texas, Louisiana, and to Kansas City, Mo., and Tulsa, Okla. From Stone Mountain shipments move to Russellville, Ark., and Kansas City, Kans. From Chamblee shipments move mainly to specified points in Mississippi, Arkansas, and Louisiana. In 1965 shipper moved 1,500 tons by motor carrier from Savannah to points in the involved destination territory, 154 tons from Chamblee, and 96 tons from Stone Mountain. Both TL and LTL shipments will move from Savannah. Only LTL shipments will move from Chamblee and Stone Mountain. Approximately 1.1 million pounds moved from Savannah in TL and LTL lots to Kansas City. This traffic moves between two and four times a month.	From Savannah to Little Rock, Ark., Kansas City, Kans., and Fort Smith, Ark., Bowman originates and interlines with Mercury, Gordons, Jones, Red Line, and Watson-Wilson. To Kansas City, Kans., and Tulsa, Okla., Bowman originates and interlines with Watson-Wilson and Jack Cole. Hall originates traffic to points in Mississippi. Roadway and Herrin have been used in single-line service to points in the Southwest and to Kansas City. McLean originates traffic to Olathe and Topeka, Kans., interlining with Crouch and Freightways. Ryder and Transcon are used from Stone Mountain and Chamblee.	Shipper has had difficulty in obtaining equipment from Roadway. It does not want to have to rely solely on the services of Herrin. Because Herrin's Savannah terminal closes at 6 p.m. some of shipper's traffic can be delayed up to 18 hours in transit time. Shipper introduced an exhibit showing that on specified shipments from Savannah to points in Kansas, Texas, Oklahoma, Arkansas, and Mississippi the transit times were not satisfactory. Arkansas Best refused to interline at Memphis and deliver shipper's traffic to points in Arkansas, Texas, and Oklahoma. From Savannah shipper wants 2- or 3- day service on TL and 3- to 4 day service on LTL to Kansas City and to Topeka and points in Arkansas, Texas and Louisiana. To Mississippi it wants 1- or 2-day service on TL and 3-day service on LTL. From Chamblee and Stone Mountain shipper wants 2-day service on TL, and 3-day service on LTL shipments, to Kansas City; 2 days on TL and 3 days on LTL to Arkansas, Louisiana, and Texas; and to Mississippi, next-day service on TL and 2-or-3 day service on LTL.	Bowman, Johnson, Jones. Bowman's service is satisfactory. Brown's service from Savannah to Atlanta is described as good. Herrin's service is discussed as satisfactory. Shipper indicates that if it had the services of Johnson and Bowman in addition to Herrin from Savannah it would have adequate service. Shipper has no complaints with respects to the service of Ryder.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
16. (32) William Jones Company, Atlanta, Ga. Loose-leaf devices and forms.	Inbound shipper receives shipments from Chicago, Ill., and Elizabeth, N. J. at its Atlanta warehouse. Outbound from Atlanta it ships to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, Vicksburg, and Greenville, Miss. During the first 5-months of 1966 shipper had 144 shipments to points in Mississippi, weighing a total of 19,319 pounds, with the average shipment weighing about 170 pounds.	Johnson is used to Mobile, Ala. and Bowman is used to Birmingham, Ala., Dixie and Georgia Highway are used interlining at Birmingham.	Shipper expresses a need for second-day single-line service to the Mississippi points named. It has limited dock space and therefore wants the number of carriers serving it limited.	Bowman and Johnson. Deaton's service along with that of Bowman, Dixie, and Johnson is described as satisfactory.
17. (33) General Aniline and Film Corporation, New York, N. Y. Photographic and reproduction materials	From shipper's destination center at Atlanta, Ga., to the Jackson, Mississippi area and the Baton Rouge, La., area. Approximately 120,000 pounds a year moves to Mississippi and 50,000 pounds moves to Louisiana annually. During the first 5 months of 1966 shipper had 23 movements weighing a total of 21,318 pounds cumulatively to Jackson and Vicksburg, Miss. Only three of the shipments moved to Vicksburg.	The single-line services of Dixie and Ryder are used on shipments to Mississippi. Of the 23 shipments moving to Mississippi points in the first months of 1966 Ryder handled only 2.	Shipper wants 2-day service to points in Mississippi. It indicates that its present service is not satisfactory. It receives complaints almost every week about service from our consignee at Jackson.	Bowman and Johnson. Shipper has used the services of Bowman and Johnson and describes them as satisfactory. Shipper has not made an investigation to determine what other services are available from Atlanta to its destination territory.
18. (34) Hamer, Inc., Atlanta, Ga. Chemicals and sanitary supplies	From Atlanta to its 100 customers located at Meridian, Jackson, Laurel, Greenville, Vicksburg and Columbus, Miss., shipper has about 6,000 pounds moving each week. To Laurel it has weekly shipments ranging from 100 to 36,000 pounds. If single-line service were available shipper would have traffic moving to points in Louisiana and Arkansas.	On shipments to the named Mississippi points, United or Alabama Georgia originates the traffic and interlines at Birmingham with Campbell and Best. Occasionally Deaton and Baggett originate the traffic. Bowman also originates the Mississippi traffic interlining with Best.	Shipper wants second-day service from Atlanta to the named Mississippi points. Baggett holds shipments at Birmingham sometimes as long as 15 days, even though shipper has complained of this practice. Shipper has experienced delays in pickups with Deaton.	Bowman, Johnson and Jones. Ryder has been used on shipments to Mississippi. However, shipper complains of delayed pickups with this carrier. Shipper uses the services of Bowman and Johnson and indicates that they are satisfactory.
19. (36) Setzer-Cliff Mills, Atlanta, Ga. Lingerie	From Atlanta to specified points in Arkansas, Louisiana, Texas, Missouri, Oklahoma, Florida, and Mississippi, during the past 6 months of 1966, shipper had 51 shipments with a total weight of 9,364 pounds and with a average weight of 164 pounds a shipment.	T.I.M.E., Ryder, East Texas, Johnson Gordons, Dixie and Deaton. Additionally shipper uses the Southern Railroad. Johnson handles shipper's Louisiana traffic in single-line service. Dixie and Deaton handle shipper's Mississippi traffic.	Shipper has limited dock space and needs consistent pickup service to keep the dock area from becoming overcrowded. It prefers single-line service and wants second- or third-morning delivery to points in Mississippi; fourth- morning delivery to Arkansas; fourth-morning delivery to Texas; third-morning to Louisiana; and fourth or fifth-morning to Missouri.	Bowman, Johnson, and Jones. Shipper did not know of any direct service to points in Texas. Johnson service to New Orleans, La., is described as good. Shipper complains generally about the pickup service of Ryder after it merged with Hoover. However, it had no complaints with respect to the service rendered by Ryder in first 4 months of 1966. It did not know whether or not there is a single line service from Atlanta to Houston, Dallas, and Fort Worth, Tex., and points in Arkansas. Also, shipper did not know the points T.I.M.E. could serve direct.
20. (45) Black and Decker Company, Atlanta, Ga. Powertools	From Atlanta to Memphis, Tenn., and to New Orleans, Baton Rouge, Lafayette, Harvey, Metairie (both Metairie and Harvey are located within the commercial of New Orleans.) Monroe, Alexandria, New Iberia, Morgan City, and Lake Charles, La. with daily shipments to New Orleans and one or two shipments a week to each of the other points. Shipments range from a minimum weight to 1,500 pounds, with the average shipment weighing between 200 and 300 pounds.	Ryder's and Cole's service have been utilized. Cole is used on shipments to New Orleans.	Shipper is not receiving satisfactory transit time from Cole. It wants the service of a carrier capable of serving all of its destination territory so as to avoid congestion at its loading dock. Shipper attempted to use Baggett's service to New Orleans but could not receive satisfactory pickup service.	Morris. Shipper has not made an investigation to ascertain the availability of carriers to Memphis, New Orleans, or any of the other named destination points. Shipper is satisfied with Ryder's pickup service.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
21. (46) Boykin of Georgia, Inc., Atlanta, Ga. Wall board, fibre glass, metal mouldings, and adhesives.	From Atlanta to Baton Rouge, New Orleans, Lake Charles, Lafayette, Shreveport, Monroe, and Alexandria, La.; Jackson, Meridian, Biloxi, Gulf Port, Miss.; Little Rock and El Dorado, Ark.; and Dallas, Fort Worth, Houston, Waco, Tex. Shipper has four movements a month to New Orleans; about two movements a month to each of the remaining named Louisiana points; one a month to the Mississippi points and about five times a month to the named Texas points. It expects to ship to the Arkansas points. Its shipments are TL and LTL.	Ryder, Central, Gulf Dixie, Johnson, Boston, and Overnight with Herrin. Johnson, Overnight and Ryder used to New Orleans. East Texas is used to Fort Worth and Dallas. Sometimes Overnight originate Houston traffic and interline it at Macon, Ga., with Herrin.	Shipper has experienced problems with Ryder on pickups and slow delivery.	Herrin and Red Ball.
22. (47) Marsh Wall Products Division of Masonite Corp., Atlanta, Ga. Wall panelling, adhesives and allied products	From Atlanta shipper has daily movements to points in Louisiana, including Baton Rouge, Lafayette, Lake Charles, Harvey, and New Orleans. The shipments range from a minimum weight to 15,000 pounds with the average shipment weighing about 800 pounds.	Johnson, Dixie, and Ryder.	Shipper wants single-line service. Johnson renders good pickup and delivery service. However, when shipper's traffic has to be interlined there are delays. Dixie renders good pickup service but shipper has had complaints with respect to its transit times. Because shipper's product is susceptible to damage it does not want to have to rely on interline service.	Herrin and Johnson. Shipper has had some difficulty in obtaining pickup service from Ryder. Boston and Seaport hold authority from Atlanta to New Orleans. Shipper has used Boston.
23. (48) Life Time Foam Products, Franklin Parks, Illinois Mattress covering and ticking	From shipper's Conyers, Ga., plant to its plant at Mesquite (which is located in the Dallas, Tex. commercial zone) and Houston, Tex. Shipper has 50 to 75 expedited movements a month to the two Texas points with an average weight of 500 pounds.	East Texas, Ryder, and Headway are used from Atlanta to Houston, and Transcon and East Texas to Mesquite. Owens originated the traffic at Conyers and interlines at Atlanta with the above-named carrier. Shipper, however, has commenced using its own equipment to deliver the shipments to Atlanta. Headway and Johnson made pickups at Conyers for a short period. Headway and Gordons were used from Atlanta to Mesquite.	Shipper wants between 2- 4-day service from Atlanta to Houston. It must be consistent service. East Texas is not rendering consistent service from Atlanta to Houston. Shipper introduced an exhibit showing transit time for a 6-month period from Conyers to the two Texas points. To Houston shipper received between 3- and 8-day service. To Mesquite it received between 3- and 9-day service. Intervening week-ends and holidays were included in computing the transit time.	Strickland. Headway holds single-line authority from Conyers to Mesquite and Houston. Shipper's use of its own equipment from Conyers to Atlanta has improved transit time to the Texas points. It will continue handling the portion of the movement even if the application is granted. Shipper would rather have consistent 4-day service than have some shipments delivered in 2-days and others delivered in 3- or 4-days.
24. (49) Warner-Slimwear Lingerie Co., Chamblee, Ga. (Atlanta) Ladies foundation garments	From Atlanta shipper moves between one and five shipments each day weighing between 70 and 300 pounds to New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lafayette, and Lake Charles, La., and between two and six shipments a day weighing between 60 and 300 pounds, with some shipments weighing 1,000 pounds, to Dallas, Fort Worth, Beaumont, Waco, Galveston, Laredo, and San Antonio, Tex.	Johnson, Dixie, Gordons, East Texas, Georgia Highway, and Ryder. Gordons is used to Dallas and Fort Worth in single-line service.	Shipper has experienced problems with the pickup service of Georgia Highway and Dixie.	Herrin and Red Ball. Ryder has taken shipper off regular pickup list. Shipper notes that Ryder offers single-line service to Fort Worth and Dallas, and that Johnson, Ryder, Boston, Seaport, and Dixie offer single-line service to New Orleans.
25. (51) Cochran and Company, Atlanta, Ga. Brass fittings	Inbound shipper receives one movement a week from Nacogdoches, Tex. The movements are in LTL lots and weigh about 5,000 pounds. Occasionally shipper has a TL movement.	Shipper had used Red Ball and Bowman interlining at Memphis, Tenn. It terminated this routing and began using Ryder or East Texas as the delivering carrier through Shreveport, La.	Shipper introduced an exhibit which indicates that on 23 shipments picked at random or selected to show both poor and good service it received inconsistent and inadequate service. The shipments moved from Nacogdoches to Atlanta between 5/27/65 and 7/14/65. All but two of the shipments involved weekends. Most of the shipments had a transit time of 5 days including weekends and the transit times varied from 3 to 10 days including weekends. The shipment requiring 10 days was delivered by Bowman. Shipper wants single-line, 2-day service from Nacogdoches to Atlanta. It would be satisfied with Herrin's proposed Friday to Monday or Tuesday service.	Herrin, Bowman, Johnson, and Strickland. Herrin and Red Ball are the only applicants authorized to serve Nacogdoches.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
26. (36) Avon Products, Atlanta, Ga. Toilet preparations and related items	From Atlanta to all points in the territory Red Ball presently serves primarily shipments will move to Jackson, Miss., and Alexandria, Baton Rouge, and Shreveport, La. Approximately 120,000 pounds moved monthly with the average weight of each shipment between 200 and 7,000 pounds.	To Shreveport shipper uses two-line haul of Cole and Red Ball interlining at Jackson. To Baton Rouge it uses Cole interlining with SAIA at New Orleans. Johnson was used to originate shipments to Baton Rouge. To Alexandria shipper uses Cole interlining with Red Ball. Shipper uses Cole to Jackson.	Shipper has had difficulty in receiving scheduled service on shipments handled in interline service. Shipper supports Red Ball to Jackson because it does not have the selection of carriers it would like.	Red Ball. Shipper is aware that to Jackson it has the direct, single-line services of Cole, Deaton, and Ryder.
27. (36) Lathem Time Recorder, Atlanta, Ga. Time recording machines, equipment, and supplies	From Atlanta shipper has about 50 to 75 movements each month to those points in Texas and Louisiana served by Red Ball. Shipper's average movement weighs about 100 pounds.	On westbound traffic from Atlanta, shipper uses T.F.W.E., Transcon, Fisher, G.F.A., Watson-Wilson, Gordons, Dixie, R.E.A., and on eastbound, Johnson.	Shipper wants single-line service.	Red Ball.
28. (36) E. G. Smith & Sons, Division of Olin Mathieson Chemical Corporation, Atlanta, Ga. Drugs and medicines, toilet preparations and related merchandise.	From Atlanta shipments move to Jackson, Greenville, Vicksburg, Meridan, and Gulfport, Miss., and Mobile, Ala. Shipper is primarily concerned with points in Mississippi, especially Jackson. In the first 3 months of 1966 it had 130 shipments from Atlanta to Jackson, varying in weight between 14 and 543 pounds. For the same period in 1966 it had 127 shipments to Jackson, with the average shipment weighing about 300 pounds.	To Jackson, shipper uses REA and Alabama Georgia Express interlining with them. To Meridan it uses REA and GFA. To Vicksburg it uses REA and also GFA to Mobile, Ala. Interlining with Red Ball.	Shipper's traffic must often have protection in transit from heat and cold. It stopped using Dixie to Jackson because of customer complaints regarding transit time. Consistency of service is important because shipper's customers do not maintain large inventories. Expedited service is required in pharmaceuticals and on shipments to hospitals. Shipper has limited loading facilities and wants the services of a carrier that can serve all of the involved points so that congestion at the loading dock can be avoided.	Red Ball. Shipper was aware that Cole had single-line authority to Jackson. It indicated that it was willing to to try Ryder's direct, single-line service to Vicksburg and Jackson. It is not seeking service to Mobile. Shipper had not tried service of Dixie after it changed ownership.
29. (39) Jason Manufacturing Company, Middleton City, Ind. Plumbing specialties	From shipper's Atlanta warehouse small LTL shipments move weekly to Baton Rouge, Shreveport, and Shreveport, La.; once a month to Dallas; and occasionally to the Houston area. The average shipment weighs 300 pounds.	To the three Louisiana points shipper uses Johnson to New Orleans interlining with a connecting carrier. Woodbury is used to Dallas and Houston and East Texas to Dallas.	Because of poor transit times from Atlanta to Louisiana shipper had to commence supplying its Louisiana customers from its smaller Dallas warehouse. If it received second-day service to the named points in Louisiana from its Atlanta warehouse it believes it would be able to again serve its Louisiana customers from Atlanta.	Deaton. Shipper uses Deaton to Jackson, Miss. and is satisfied with the service.
30. (41) Coats & Clark's Sales Corp., New York, N. Y. Cotton thread and yarn, zippers, wool, and synthetic yarns and related sewing articles	From shipper's Atlanta warehouse it has two TL a week moving to its Dallas, Tex. warehouse. Between 1/1/66 and 5/31/66 shipper had 49 movements to Dallas weighing a total of 1.3 million pounds.	Deaton originates the shipper's traffic and interlines at Greenville, Miss. with Jones.	Shipper computerized its stock control on a 2-day transportation service basis and consistent transit times are therefore important. Shipper prefers single-line service and expresses a need for Deaton's proposed 2-day service.	Deaton. Shipper's experiences with the Deaton-Jones service has generally been good. It has experienced only a few instances of inadequate service when Jones was unable to supply trailers at the interchange point. Shipper is aware that Woodbury had single-line authority to Dallas but did not know for sure which other carriers held single-line authority to this point. It did not investigate other joint-line services because it has been satisfied with the service of Jones and Deaton.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
20. (410) Georgia-Pacific Corp., Crossett, Ark. Paper products	From Crossett to Anniston, Birmingham, and Tuscaloosa, Ala.; Atlanta, Ga.; Shreveport, La.; Jacksonville, Miami, and Tampa, Fla.; and Dallas, Fort Worth, San Antonio, and Texarkana, Tex. Ships outbound almost .25 million pounds annually. Ships 12 shipments a month to each of the above points. Receives 12 shipments a month from Birmingham, Atlanta, and Savannah. All shipments are TL.	Private carriage Red Ball, Red Line, ETHW, Strickland, and Jones.	Wants better single-line service.	Strickland.
21. (411) Walker Hardware and Lumber, Hamburg, Ark. Hardware	From Texarkana, Tex.; points in Mississippi; Atlanta, Ga.; and points in South Carolina to Hamburg. No volume figures presented.	Red Line.	Has no specific complaints. Wants single-line service.	Strickland.
22. (416) W. Shackelford and Sons, Inc., Magnolia, Ark. Cotton piece goods	From points in North Carolina, South Carolina, Alabama, and Mississippi, to Magnolia. Receives between 15 and 20 shipments each month, weighing from 7,000 to 15,000 pounds.	Overnite, Dixie, Red Ball.	Wants consistent service. Average transit time is 6 days, including weekends. Wants 4-day service. Also wants proposed 2-day service from Atlanta.	Strickland.
23. (415) J.A. West Co., El Dorado, Ark. General merchandise	From points in Georgia, North Carolina, South Carolina, and Alabama to El Dorado. Weights range from 100 to 500 pounds. Received 24 shipments from 3/56 through 4/56.	T.I.M.E., Atlas, ETHW, Powell, Ryder, Gordons, and Marvin.	Wants faster more consistent service. Wants proposed 2-day service from Atlanta and Birmingham to El Dorado.	Strickland. Shipper does not route all shipments
24. (430) Haller-McCoy Co., Texarkana, Ark. Dry goods.	Inbound from points in Alabama, Georgia, North Carolina, South Carolina and Virginia and from Texarkana, to points in Arkansas, Texas, and Oklahoma. Between July and September, 1956 shipper received 7 shipments from Alabama totaling 3,393 pounds, average weight a shipment 1,116 pounds. From North Carolina during same period shipper received a total of 17,907 pounds, each shipment averaging 1,119 pounds. From South Carolina (same period) 1,845 pounds averaging 615 pounds a shipment. Outbound daily shipments move to Oklahoma average between 250 and 400 pounds. (Specific tonnage for other points not given).	East Texas, Arkansas-Best, and Red Ball. Southwestern and Strickland are used at Texarkana. Also, number of carriers have been used to originate traffic in the East.	Wants 2-day service from points in Alabama, Georgia, Virginia, and the Carolinas, and wants 3-day service to Oklahoma points. Average transit time from Georgia and the Carolina points is 6.4 days. From Virginia average transit time is 8.9 days. (Average transit time from other points not given.)	Benton and Jones. Transit study does not include all shipments which moved during the period in question. No specific complaint about existing services.
25. (433) Moore Stores	Non shipper under Texas heading.			
26. (436) Forest Oil Company, Inc., Conway, Ark. Cars and pumps	From Conway between 1/19/56 and 10/10/56, a total of 75 shipments were moved to Birmingham, Huntsville, Florence, Montgomery, and Tarrant, Ala.; points in Georgia, including Atlanta; to 14 points in Florida including Miami, Clearwater, and Petersburg, Fla.; Asheville, Statesville, Charlotte, Burlington, and Goldsboro, N.C.; Bristol, Hinsdale, and Roanoke, Va.; Baltimore and Frederick, Md.; Parkersburg and Charleston, W. Va.; eight points in New York; New Bedford and Fall River, Mass.; Hagerville, Ky.; Altoona, and Johnstown, Pa.; and Charleston and West Columbia, S.C. The traffic is LTL.	Arkansas-Best and Belt originate the traffic and Interline at Little Rock or Memphis.	Shipper is not satisfied with the service to the involved destination points. Complaints are received daily during shippers busy season. It allows 7 days for delivery to Atlanta and Birmingham and 10 days to other points in Georgia and Alabama and to points in New York, Pennsylvania, and Florida.	Benton and Jones.
27. (441) Brunswick Industries, Inc., Cabot, Ark. Army caps and cloth items	From Cabot to points in the United States. Representative States are: Pennsylvania, The Carolinas, Alabama, Georgia, Florida, New York, New Jersey, Maryland, Tennessee, and Utah. About 41,344 moves annually.	Powell, Superior, Jones, Gordons, T.I.M.E., and Transcon in joint-line service through either the Little Rock or Memphis gateway.	Needs faster service, as a government contractor it is subject to penalties for late deliveries. Needs a two-line service as opposed to the present three-line. Presently allowing 3-days load time to Atlanta, 3 to 4 days to other points in Georgia, 5 days to Florida, 6 to 7 days to points in Maryland, and 9 to 10 days to New York.	Jones and Benton. The requested authority would only give shipper a two-line service to Atlanta, Ga., service to the other destination points would continue to be three-line basis. It appears that shipper has two-line service to all involved destination points, but is not satisfied with the service of these assumed carriers.
28. (341) Steele Canning Company, Springdale, Ark. Canned foods	From shipper's plants in Springdale, Lowell, and Fort Smith, Ark., and Tyler, Shiloh, and Sherrille, Okla., to Atlanta, Ga., Birmingham, Ala., and points in North Carolina, and South Carolina. Approximately 430,000 pounds, 680,000 pounds, 140,000 pounds and 400,000 pounds shipped to respective destination States during first 9 months of 1956. All are TL shipments.	Transcon, Reddish, Jones, and private carriage.	Shipper wants to eliminate use of private carriage in destination area.	Jones. Shipper is presently using the service of R.E. Reddish Transportation, a motor contract carrier to the involved States, without complaint.
29. (349) Spotlight Co., Inc., Allentown, Pa. Ladies lingerie	From Alkman, Albermarle, and Collins, N.C., to its plant at Ashdown, Ark.; from Ashdown, Ark., to points in Alabama, Georgia, Florida, Mississippi, North Carolina, and South Carolina. Inbound annual volume is about 500,000 pounds. Outbound annual volume is about 100,000 pounds.	Dunaway, ART, Arkansas-Best, and Strickland.	Joint-line service inadequate. Wants faster service. Presently allowing 10 days load time.	Strickland.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
30. (710) Georgia Pacific Corp., Crossett, Ark. Pulpboard, paper and paper products.	From Crossett, to points in Alabama, Georgia, Florida, North Carolina, South Carolina, and Tennessee. Shipments range between 100 and [illegible],186 pounds.	Red Ball, Arkansas-Best, Red Line, Jones, Thurston, Warner Smith, Ellis, Penner, East Texas, Strickland, Superior, ET&WNC, Carlyle.	Shipper wants to eliminate private carriage to Florida. Wants third-morning service to northern Florida and fourth-morning service to southern Florida.	Bowman and Jones.
31. (688) Gotham Educational Equipment Co., Inc., Marked Tree, Ark. Educational equipment	From Marked Tree to points in Alabama and Georgia. Approximately 300,000 pounds moves annually.	Ryder, East Texas, Gordons, Jack Cole, Jenman, Alabama Highway, M.A.T., ET&WNC, Jones.	Joint-line service inadequate. Shipper states that Alabama Highway and Campbell have refused its freight. Shipper noted a complaint by one of its Florida customers against Ryder.	Jones.
32. (611) Shakespeare Sons, Inc., Magnolia, Ark. Clothing.	From Magnolia, to Chicago, Ill., Atlanta, Ga., Birmingham, Ala., Kansas City, Mo., and Dallas, Tex., and return. Shipments range between 50 and 300,000 pounds.	Southwestern, Red Ball, East Texas, Jones, Strickland, ABF, Campbell, Floyd & Beasley, Gordons, ET&WNC, Cole, and Roadway.	Joint-line service inadequate. Wants second or third day service to and from Chicago, and second-day service to and from Atlanta, and Birmingham.	Jones.
33. (677) Home Supply Company, Hamburg, Ark. Furniture, and carpets, stoves.	From Atlanta and Bolton, Ga., Roanoke, Virginia, and Dallas, Houston, and Waco, Tex., to Hamburg. Between 10 and 15 shipments monthly, ranging between 100 and 400 pounds.	Red Line, Arkansas-Best, and Missouri Pacific railroad.	Needs faster service. Wants second-morning service.	Strickland.
34. (679) Solo Lighting, Inc., El Dorado, Ark. Lighting fixtures.	From El Dorado to Atlanta, Ga., Birmingham, Ala., Dallas, Tex.; Baltimore, Md.; Tulsa, and Oklahoma City, Okla.; St. Louis, and Kansas City, Mo.; and points in New York. Weekly shipments range between 100 pounds and 500 pounds.	A.B.F., Atlas, Campbell 66, Transcon, Red Ball, Norvin.	Wants faster transit service. Presently allowing 5-days load time to Oklahoma City, 4-days to Kansas City, between 4 and 5 days to Atlanta and Birmingham, 14 days to New York, and third-morning to Dallas.	Bowman, Jones. Shipper states that because of customer complaints it has discontinued the use of A.B.F. to Kansas in favor of joint-line service.
35. (679) Greater El Dorado Committee, El Dorado, Ark.	From and to El Dorado.	Red Ball, Norvin, Arkansas-Best, Atlas.	Interested in additional transportation services.	Jones. Interstate Atlas, and Arkansas-Best, serves El Dorado in single-line service to many points.
36. (681) Daisy Manufacturing Co. Rogers, Ark. Air rifles, B.B. shot and toy guns.	From Rogers to Atlanta, Ga., and Birmingham, Ala. About 1 million pounds and 500,000 pounds moves respectively to each point.	Campbell, Jones, Ryder, Red Ball, Central.	Wants faster service.	Jones. Shipper is dissatisfied with Campbell's single-line service to Birmingham because transit time. Other joint-line service too slow.
37. (683) Brunar Ivory Handle Co., Hope, Ark. Wooden handles.	From Hope to points in Alabama, Florida, Mississippi, North Carolina, and South Carolina. About 400,000 pounds moves annually.	Strickland, interlining with other unnamed connecting carriers.	Joint-line service inadequate. Wants better 1 and 3-days service. Presently allows between 8 and 10 days load time.	Strickland.
38. (686) (a) Prince Poultry, Inc., (b) Prince Manufacturing Co. (c) West Hatch & Feed Mill, Inc., (d) Lincoln Egg, Inc., (e) S.E. Prince Co., all of Lincoln, Ark. Steel Trusses, Poultry buildings and equipment, produce, eggs and feed.	From Lincoln, Ark., to points in Alabama, Georgia, Florida, North Carolina, and South Carolina. Approx. 3.5 million and 10,713 pounds moves from respective cities.	Jones, Ryder, and Alabama-Georgia.	Joint-line service inadequate. Wants 2-day service. Must now allow 10 days to 2 weeks load time.	Jones.
39. (710) American Greeting Corp., Osceola, Ark. Greeting cards and related items.	From Osceola, Ark. to points in Alabama, Georgia, Florida, North Carolina, and South Carolina. About 30 million pounds moves annually in TL and LTL shipments.	Gordons, Campbell, ET&WNC, Superior, Arkansas-Best, M.A.T.	Wants LTL single-line service to destination States.	Jones. Shipper states that Ryder can serve it in single-line service but this carrier is not interested in the traffic. Traffic seasonal needs expedited delivery.
40. (711) Gerretts	See shipper under Missouri heading.			

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Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
41. (735) Alader Mfg. Co. Rector, Ark. Aircraft and missile parts.	From Rector to Marietta, Ga. (four shipments a week totaling between 4,000 and 5,000 pounds and Birmingham, Ala. (400 to 500 pounds a week.)	Southwestern, Arkansas Best cannot give daily pickup). Transcon (by interlining with Jones.	Present service too slow. Jones offers overnight service to Birmingham and Atlanta. Average transit time between 2 and 3 days. Wants proposed overnight service to Atlanta and Birmingham.	Jones. If authority is granted. If Jones could not deliver commodity from Rector to Marietta, in single-line service, it would have to interline at Atlanta. Jones.
42. (736) Harry S. Barr Company, Fort Smith, Ark. Aluminum extrusions.	From Atlanta, Ga. and Birmingham, Ala. to Fort Smith. Atlanta to Ft. Smith one shipment every 6 weeks weighing 3,000 pounds. Birmingham to Ft. Smith once every 6 weeks weighing between 700 and 1,000 pounds. Not presently shipping outbound from Ft. Smith.	Gu[illegible], Campbell, Mercury.	Wants faster service.	
43. (737) Cal-Dak, Industries, Inc. Little Rock, Ark. Tubular housewares.	Inbound, from points in North Carolina, South Carolina, and Alabama, to Little Rock. Shipper receives over 100,000 pounds a year. Outbound, from Little Rock, to points in the Southeastern States. Ships in excess of 1,000,000 pounds a year.	Inbound, ET & WNC and Campbell. Outbound, T.I.M.E., Gordons, Campbell, ABF, ET & WNC, Ryder, Mercury, Thurston, Bowman, Central.	Wants faster deliveries and easier tracing of shipments. Allows 7 to 10 days lead time from to Florida, 5 to 7 days to the Carolinas; and 3 to 5 days to Georgia and Alabama.	Bowman, Jones and Red Ball. T.I.M.E., Gordons, and Transcon offer direct service to Atlanta, Ga.. Gordon and Campbell offer direct service to Birmingham and Bessemer, Ala. T.I.M.E. offers direct line service to Atlanta, Ga.
44. (738) Virco Manufacturing Corporation, Conway, Ark. School furniture.	From Conway to points in North Carolina, South Carolina, Georgia, Florida, Alabama, and Tennessee. Shipper transports approximately 65,000 to 70,000 pounds a month. Shipments weigh from 100 to 3,700 pounds with an average weight of 600 pounds.	Mult interchanging with ET & WNC, T.I.M.E., Central, Overnight, Tomlami, Thurston, Ryder, Georgia Highway, Carolina Freight, M & D, Atlas, Roadway.	Desires joint-line service of Mult from Conway to Little Rock and Bowman from Little Rock to points in southeastern States. Supports Jones to Atlanta, Ga., and Birmingham, Ala. Allows lead time from Conway to Florida points of 7 to 12 days; Atlanta 3 to 5 days, Eastern Seaboard, 5 to 8 days. Needs 3 to 5 days service to Florida and 3 days to all other areas.	Bowman and Jones. T.I.M.E. & East Texas offer direct service from Little Rock to Birmingham and Atlanta. Ryder serves points in Florida from Little Rock through the Memphis gateway.
45. (739) Chamberlin School Furniture Inc., Conway, Ark. School furniture.	From Conway LTL shipments to points in Alabama (30,000 pounds a year), Georgia (30,000 pounds a year), Florida (20,000 pounds a year), South Carolina, New York and New Jersey. (private carriage 90,000 pounds none TL), North Carolina (300,000 pounds handled in private equipment and none LTL).	Mult to Little Rock and interline with ET & WNC, T.I.M.E., Superior, R.D., Central, Springmeier, Atlas, Bowman, Pic-Walsh, Mall.	Wants single-line service from Conway so it does not have to use its own equipment. Present joint-line service too slow. Allows lead time of 7 to 10-days to the points in the northeast, 7 to 10-days to Florida and 4 to 5-days to points in the Southeast. Needs 3 to 4-day service to all points.	Bowman and Jones. Presently shipping 60 percent of its volume by private carriage. Direct service available from Conway to Memphis gateway, which shipper didn't know about. Mercury can also serve direct from Conway to Memphis.
46. (740) Gravette Shelling Company, Gravette, Ark. Black walnut kernels, processed shells, metal containers and paper bags.	Inbound, Mobile Ala. to Gravette (125,000 pounds a year). Outbound, Gravette to Miami, Fla. (10,000 pounds every 6 weeks in TL lots).	Jones, Campbell, Ryder Central.	Wants faster service. Wants 3-day service between Atlants and Gravette and between Atlanta and Mobile.	Jones. Shipper is satisfied with Ryder's service. See shipper under Missouri heading. Also, 27. (711).
47. (745) Sanco's aluminum irrigation company, Fayetteville, Ark. Irrigation motors and pumps.	From Atlanta to Springdale, Ark. No figures given as to volume or frequencies.	Transcon.	Wants faster service.	Jones.
48. (746) Carpet Land Springdale, Ark. Carpets and padding.	From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives 6,580 pounds of LTL shipments a month from Atlanta and the same from Birmingham.	Jones from Dallas, Georgia Highway, Campbell, Red Ball, ET & WNC, T.I.M.E.	Transit time important because shipper's store is small and it cannot maintain a large inventory. Wants faster service. Average transit time from Georgia is 8.3 days including weekends. Wants 2-day service from Birmingham and Atlanta to Springdale.	Jones. Shipper wants a two-line haul in place of a three-line haul. However a two-line haul is presently available to shipper with Ryder-Jones.
49. (751) The Grapette Company, Inc., Camden, Ark. Concentrates and dry chemicals.	From Camden to points in North Carolina, South Carolina, Florida, Tennessee, Alabama, Virginia, Maryland, Georgia, New York, and New Jersey and to Washington, D.C. ships approximately 25 shipments a month to the above States. Shipments average 400 pounds. Also receives grape juice from New York, and orange juice from Florida (15 shipments a month weighing 19,000 pounds).	Southwestern, interlining with ETAWNC, Overnight, Gordon, Thurston, Rutherford, Central, Preston, Ball, Mall, and Ryder Railroads & T.I.M.E. on inbound shipments.	Complaints of undue delays in transit with the available joint-line service. Single-line service would eliminate damage. Allowing 5 to 7 days lead time on shipments to Alabama, Tennessee, the Carolinas, Florida, Virginia and Maryland.	Bowman.
50. (752) James H. Matthews and Company, Searcy, Ark. Bronze cemetary memorials.	From Searcy to points in Alabama, Florida, Georgia, and Tennessee. Ships 35,000 pounds a month to above States. Each shipments is LTL and weighs less than 100 pounds.	Powell interlining with Ryder, Transcon, Bowman, Merrin, Gordons, Hidesmith, Polaski, Hoover, ETAW, Mall, Soufo, Robinson, Skyline, Baggett, ETAWNC, Campbell, and Viking	Supports Bowman from Little Rock, Ark. to points in destination territory because it wants faster delivery allowing lead time to Florida of 5 to 7 days, Georgia, 4 to 5 days, Alabama, 4 to 5 days, and the Carolinas, 4 to 7 days. Needs 2-day service to Georgia and Alabama, and 3-day service to the Carolinas and Florida.	Bowman. Already has numerous two-line service. Shipper kept no record of specific complaints.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
51. (769) Kenway Co. Fayetteville, Ark. Electrical switches, fuses and pole line equipment.	From Fayetteville to Atlanta, Ga., Greenville, Miss. and Birmingham, Ala. Ships 1,000 to 4,000 pounds every 2 weeks to Atlanta (LTL) and 500 to 4,000 pounds two times a week to Birmingham. (LTL) has occasional shipments to Greenville.	Jones, Red Ball, Campbell.	Too many delays with present service. Wants second-morning service to Atlanta and Birmingham.	Red Ball, Jones. Shipper has no complaints with present service to Greenville (single-line). Campbell offers single-line service to Birmingham.
52. (766) Democrats Printing and Lithographing Company, Little Rock, Ark. Catalogues, magazines and books.	From Little Rock to points in North Carolina, Florida, Georgia, Alabama, South Carolina, and Virginia. Ships about 5,000 to 10,000 pounds a month to the above areas. Weight may range up to 17,000 pounds.	ABF, Campbell, Gordons, E.T.&H.F. Hall, Ryder, Thornton, Jones, Tuvlani, ET&HMC, Buckaboo, Bowman, White, R.C. Masters, Overnight, and Control.	Wants faster transit time. Wants second-third-morning service to Florida, and 1- or 2-day service to Alabama and Georgia, and 2- or 3-day service to Virginia and North Carolina.	Bowman, Jones. Jones interlining at Memphis with Bowman, can serve the Carolinas and Alabama.
53. (771) Tobler Corporation, Hope, Ark. Protective coatings for plastic.	From Hope to the Atlanta, Ga. gateway. Ships 2 or 3 times a week about 1,700 pounds a shipment.	Hidney-Little Rock-ET&HMC, T.I.M.E. Strickland, Memphis, Tennessee.	Allows 7 to 10 days lead time expects 2-day service to Atlanta with Strickland.	Strickland. If application were granted, would still be a 2-line haul. Likes Strickland's service.
54. (770) Hardwood plastic products, Fort Smith, Ark. Molded chairs and desks.	From Fort Smith to Birmingham, Ala. Ships 30,000 and 36,000 pounds a week to Birmingham.	Gordons, Jones, Cole.	Wants the convenience of a single-line service. Has complaints with Cole's service. Wants faster deliveries. Wants second-morning service to Birmingham.	Jones. Shipper dissatisfied with Jones interchanging with Cole, but there are 3 other carriers Jones can interchange with that have been queried.
55. (776) Ralph Jones Company, Inc. Silcox Springs, Ark. Plastic pipe and fittings.	From Silcox Springs to points in Alabama and Georgia. Shipped 75,000 to 100,000 pounds to above areas in 1966. Expects to ship 500,000 pounds in 1967. The traffic is LTL. Average weigh of each shipment is between 2,000 and 3,000 pounds.	Buhle, Gordons, Jones, Campbell, Ark-Best.	Wants faster transit time and single-line service. Wants 2-day service to Atlanta and Birmingham.	Jones.
56. (778) Sterling Stores Co., Inc. and Cash Wholesale Co., Inc. Little Rock, Ark. General merchandise.	From points in New Jersey, North Carolina, South Carolina, Georgia, and Tennessee to Little Rock.	Wooleyhan interlining with T.I.M.E., Thornton-PDM, Atlas, G.M.E., Campbell, ET&HMC, Old Dominion, Helms, Federal, Dixie, Mercury, Roadway, Overnite, NFL, Ryder, Tennessee, Catawba.	Wants faster transit time. Wants single-line service to avoid tracing problems. Average transit time about 4 days including weekends. Wants proposed 2-day service.	Bowman. Uses private carriage Jones' service from Memphis is good.
57. (779) Hutton Stores Huntersville, Ark. General merchandise.	From the Atlanta, Ga. and Birmingham, Ala. gateways to shippers stores located at Huntersville, Springfield, Silcox Springs, and Rogers, Ark. All shipments are LTL averaging about 300 pounds.	Jones, ABF, Campbell, Red Ball, Overnite, T.I.M.E Co. B'way, Caton, RCA, Thornton, Ryder, TCT, PIE, Gordons, Hardemb, Harper, Barnes, Cope, Thornton, Buckaboo, Dennis, Tennessee, Pine, ET&HMC, RC, Meadors, Helms, Buhle, Standard, Baggett, West, R.C.V. AAA Highway.	Wants less in-transit. Average transit time about 5 days.	Jones. Shipper has not reviewed the service of many of its origin carriers.
58. (781) Fine Trees Line, Fort Smith, Ark. General freight.	From Fort Smith to Atlanta, Ga. and Birmingham, Ala. (and beyond). Between 500 and 1,000 pounds handled to above points and beyond each day.	Gordons, Campbell, Mercury, ABF, Jones,	Wants to interline directly with Jones. Presently getting inconsistent second-day service. Wants consistent 2-day service to Atlanta and Birmingham.	Jones.
59. (780) Standard Register Company, Fayetteville, Ark. Printed forms and paper.	From Fayetteville to points in Florida. Shipped 81,758 pounds to Florida during 1966.	Jones, Campbell, Ryder, and Tennessee Hall, Control, Tuvlani, Red Ball, Tuvelani.	Jones would give shipper 2-day service to Atlanta gateway. Wants single-line service to Atlanta. Average transit time 7.2 days including weekends. Allowing 4 days lead time to Atlanta.	Jones. Shipper has a wide choice of existing services through many gateways.
60. (787) Allen Lumber Company, Silcox Springs, Ark. Canned foods.	From Silcox Springs to Atlanta, Ga. and Birmingham, Ala. Expected to ship 4,000,000 pounds of food to above points in 1967. Shipped 3,000,000 pounds in 1966.	Colonial.	Colonial does not have enough equipment to meet demands. Shipper requires refrigerated service.	Jones. Colonial offers direct service. Shipper waited as long as 2 weeks to get equipment from Colonial. Shipper needs about 10 trailers a week.
61. (791) Cobb Wheel, Silcox Springs, Ark. Truck trailer axles. Outboard wheels, brake drums, truck and trailer axle assemblies.	From Montgomery, Ala. to Silcox Springs, shipper receives three shipments a year each weighing from 72,000 to 80,000 pounds. From Silcox Springs to points in Alabama, Georgia and Florida. Ships in excess of 275,000 pounds a month.	Campbell, Jones, Tennessee, ABF, Bowman, Ryder, Caton, A.A.A. Buhle and Ark.-Best.	Wants a more direct and a faster service. Wants second-morning service to Atlanta.	Jones. Campbell's route is very circuitous.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
67. (799) Southern Folder & Index Company, El Dorado, Ark. Files, folders and indexes.	From El Dorado to Greenville, Miss., Atlanta, Ga., and Birmingham, Ala. Ships once a week to Greenville (150-200 pounds) several shipments a month to Atlanta, (minimum to 4,000 pounds) and ships twice a month to Birmingham (minimum to 3,000 pounds).	Red Ball, Harvin.	Single-line service would avoid tracing problems. Wants overnight service to Greenville and second-day service to Atlanta and Birmingham.	Red Ball.
68. (800) Riverside Furniture Corporation and Twin Rivers Furniture Corporation, both of Fort Smith, Ark. Furniture.	From Fort Smith to Birmingham, Ala., and Atlanta, Ga., TL lots and LTL. Ships between 70,000 and 100,000 pounds a month to above points.	Campbell and Mercury.	Customer want faster deliveries. Wants second-morning service to Atlanta and Birmingham.	Jones. Gordons appears to have discontinued offering single-line service to this shipper. Riverside is affiliated with Ark-Best Freight. Was joint-line service and shipper has no specific complaints.
69. (809) Williams Auto & Industrial Supply, Fort Smith, Ark. Automotive and industrial supplies.	From Atlanta, Ga. and Birmingham, Ala. to Fort Smith (4,000 pounds a month).	Gordon, Mercury, Campbell, Bowman, Hannis, ETMT, McCord and T.I.M.E.	Average transit time from Birmingham is 43 days including weekends.	Jones. Gordons offers single-line service. Campbell offers single-line service from Birmingham.
70. (809) Arkansas Wholesale Dry Goods and Variety Store, Inc. Springdale, Ark. Piece goods and clothing.	From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives about 100 LTL shipments from Atlanta a year.	Jones, ABF, Campbell, Red Ball, Ryder, Huckabee, T.I.M.E., Overnite, ETMT, Thurston, Roadway, Northern, Transcon, Hannis, Gordons, Harper.	Wants fast delivery service so it can sell close-out, before the market for the goods declines. Wants second morning delivery from Atlanta and Birmingham. Average transit time is 4 to 5 days.	Jones. Proposed service would still be joint-line. Shipper has several joint-line services currently available with Jones as the delivering carrier.
66. (810) Martin Company Inc. Springdale, Ark. Piece goods rugs, towels, clothing.	From Atlanta, Ga. and Birmingham, Ala. gateways to points in Arkansas. Receives approximately 300 LTL shipments a year.	Jones, ABF, Red Ball, Roadway, Campbell, Mercury, Waldron, Hazel, Hoover, Bowman, ETSMC, STI, Carolina, T.I.M.E, TCT, Thurston, Gordons, Stasi, GMI, Smith, Overnite, SFF, and Huckabee.	Needs faster delivery so it can have close-out sales at the end of the season. Transit study only represents a small portion of the traffic. Current transit times range from 1 to 8 days.	Jones.
67. (811) Shillcutt Manufacturing Company, Inc. Springdale, Ark. Cotton piece goods.	From Atlanta, Ga. to Springdale. Receives LTL shipments from Atlanta about twice a month.	T.I.M.E., Jones, Roadway, Thurston.	Wants single-line service from Atlanta. Shipper not satisfied with 4 working day service. Wants 3-day service. Average transit time from the Carolinas is 6 days.	Jones. Gateway on most shipments has been to Memphis. Granting of the application would permit Jones to gateway at Atlanta instead of Memphis. Ryder, Jones service described as reasonable.
68. (813) Metal Stamping Corporation, Conway, Ark. Vending machines.	From Conway to points in Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee, Virginia, Maryland, and New Jersey. Ships between 40,000-50,000 pounds LTL to above points a month, weighing between 340 and 6,800 pounds. The average shipment weighs 1,000 pounds.	Holt, ETSMC, Strickland, T.I.M.E. Gordons, Red Ball, ABF, Central, AA, GMI, RRS, Huckabee, Yankee, Overnite, Helms, Baggett, Transcon, Fuller, Brown, Thurston, Terminal T., Ryder, Mercury and Atlas.	Wants a faster two-line haul rather than existing three-line haul. This would make tracing easier.	Bowman. Bowman proposes service from Little Rock. Shipper would use [illegible] to Little Rock. Several carriers have authority from Conway direct to the Memphis gateway. Also several carriers offer two-line service from Conway to Atlanta.
69. (815) Van Buren.	See shipper under Oklahoma heading.			
70. (818) Elkhart products Corp. Fayetteville, Ark. Copper solder joint fittings, parts, and pipe connections.	From Fayetteville to Atlanta, Ga., Charlotte, N.C., and Tampa and Fort Lauderdale, Fla. Ships LTL 100,000 pounds a year to Atlanta, 30,000 pounds to Charlotte, 50,000 pounds to Tampa and Fort Lauderdale, and 200,000 pounds a year to points on the east coast.	Jones, Bowman, Ryder, Thurston, Gordons, ETSMC, and Campbell.	Wants second-day delivery to Birmingham and Atlanta.	Jones. Service to Carolinas is presently a two-line haul. If application were approved it would still be a two-line haul.
71. (821) Lewis Brothers, Fayetteville, Ark. Furniture, appliances and general merchandise.	From Atlanta, Ga. and Birmingham, Ala. gateways to Fayetteville. Receives about 8,000 pounds a year in LTL lots.	Thurston, ETSMC, Tallant, McFee, Caldwell, ABF-HCA, Gordons, Georgia Highway, Campbell, Jones Standard, N.C. Ala. My. Bowman, T.I.M.E. Dixie, Transcon, Helms.	Wants a single-line service from Atlanta and Birmingham. Average transit time from the Carolinas was 6.5 days including weekends; Memphis 3 days; and 3 days to Georgia. Wants second-morning service from Atlanta and Birmingham to Fayetteville.	Jones. Jones over Memphis can currently offer the proposed two-line service.
72. (827) Fayetteville, Ark.	See shipper under Oklahoma heading.			
73. (836) Magnolia, Ark.	See shipper under Oklahoma heading.			
74. (833) The Stanley Company, Camden, Ark.	From Camden to New York, N.Y. During 1966, shipper transported 119,450 pounds to New York. Average shipments weighs 2,660 to 3,000 pounds.	Atlas, Southwestern, and Powell	Wants a faster delivery service. Allows lead time of 4 to 6 days from Camden to New York.	Bowman. Witness states that he is satisfied with existing service but would prefer a single-line service.

Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
75. (Sub) Rogers Hardware & Lumber Company, Hiwasse, Ark. Glass and garage doors.	From Atlanta, Ga. to Hiwasse, and from Hialeah, Fla. to Hiwasse. Receives about eight LTL shipments a month from the above points.	ETMT, Jones, Ryder, and Campbell.	Because of competitive reasons, a shipper needs quick transit. Wants 2-day service from Atlanta. Transit time was shown to be between 2 and 4 days from Atlanta to Little Rock where shipments are interlined for delivery to Hiwasse.	Jones. Witness admitted present service was adequate.
76. (Sub) Fort Smith Sash & Door Inc. American Home Dealers Supply Corp., both of Fort Smith, Ark. Railings and screens.	From Tifton, Ga. to Fort Smith (5,000 pounds every 4 to 6 weeks). From Conyers, Ga. to Fort Smith (one shipment every 4 to 6 weeks ranging 1,000 pounds). Shipper states it would receive 4,000 pounds every 2 weeks from Miami, Fla., but because of slow delivery service it is currently using other sources.	Georgia Highway, Gardens, Owens, Caroline, T.I.M.E., Mercury, Transcon, and Campbell.	Average transit time is 5 days including weekends. Wants second-day service from Atlanta & Birmingham to Fort Smith.	Jones. Jones proposes to serve to and from Atlanta and thus shipper would still have to rely on a joint-line service.
77. (Sub) General Business Forms Inc. Bentonville, Ark. Business forms.	From Bentonville to Atlanta, Ga. and Birmingham, Ala. Shipments are LTL weighing an average of 186 pounds.	Jones, ANF, Campbell, Red Ball, Ryder, Bowman, ANF.	Wants a single-line service. Transit time from 2 to 5 days including weekends. Allows 4 to 6 days lead time. Wants second day service to Atlanta and Birmingham.	Jones. Shipper routes about 75 percent of its outbound traffic. Campbell offers direct service to Birmingham and Mobile. Transit time appears to be reasonable.
78. (Sub) Citation Mfg. Co., Inc., Siloam Springs, Ark. Car washing equipment.	From Siloam Springs to Birmingham, Ala. and Atlanta, Ga. (as gateways). From 8/25/66 to 12/30/66, shipper transported 9 shipments to points in Florida, Alabama and Georgia with an average weight of about 480 pounds. Shipper moves 3 to 4 shipments a month weighing about 800 to 900 pounds to Birmingham. To Florida, shipper moves about 5 or 6 shipments weighing between 140 and 4,000 pounds.	Campbell, Ryder, Mall, Gordons, Bowman, Georgia Highway.	Wants single-line service to Atlanta and Birmingham in order to speed up deliveries. Wants second-morning delivery to Atlanta and Birmingham.	Jones. Shipper has not tried the services of several joint-line carriers over the Birmingham gateway.
79. (Sub) Yoes Office Supply and Furniture Co. and Yoes Printing Company, Fort Smith, Ark. Office supplies.	From Marietta, Ga., Birmingham, Ala., and points in North and South Carolina to Fort Smith. Receives 6 to 8 shipments a year from Marietta with each weighing 250 to 300 pounds; receives 4 to 8 shipments a year from Birmingham with each weighing between 500 and 800 pounds; and receives 2 shipments a month from the Carolinas with each weighing 400 to 600 pounds.	Gordons, JWL, Ryder, Mercury, ETMT, Campbell, and Overnite.	Wants faster single-line service. Average transit time 4 days excluding weekends. Wants 2-day service from Atlanta and Birmingham and 1-day service from Spartanburg, S.C. to Atlanta.	Jones. Five or six motor carriers operate between Memphis and Fort Smith. Shipper has never used the Memphis gateway. Consolidated Freightways offers single-line service.
80. (Sub) Rushin Upholstery Supply, Inc., Little Rock, Ark. Material.	From Atlanta, Ga. and Birmingham, Ala. as gateways to Little Rock. Receives LTL shipments from points in the East through Atlanta. Each shipment weighs about 150 pounds.	Freight Forwarders, Roadway, Thurston, Ryder, Atlas, ETAMC, Mercury, Superior, Garrison, Eastern, TCT, T.I.M.E., Campbell, Smith, Overnight, ETMT, Strickland, Consolidated, Cole, Transcon, Wilson, Georgia Highway, Red Ball, Dixie, Southwestern, Bowman, Midland, Long.	Wants faster single-line service from Atlanta and Birmingham. Jones promises overnight delivery. Shipper introduced a transit time study which indicates generally that the transit times shown are not satisfactory.	Bowman and Jones. Strickland offers single-line service from New York and New Jersey. Mercury seems to be giving fairly consistent overnight service from Memphis. Roadway- 2-6 days from the Carolinas.
81. (Sub) Weldon, Williams, & Lick, Fort Smith, Ark. Printed items.	From Fort Smith to points in Georgia (1,100 to 2,250 pounds moves a week), Alabama (700 to 1,500 pounds a week), Florida (1,000 to 2,000 pounds a week), and to North and South Carolina (1,000 pounds a week). Supporting Jones to Atlanta and Birmingham gateways.	Mercury-interlining with other carriers.	Wants second-morning service from Ft. Smith to Atlanta and Birmingham.	Jones. Shipper has no specific complaints with existing service.
82. (Sub) West Bend Company, Sheridan, Ark. Stainless steel cookware.	From Sheridan to Atlanta, Ga., Columbia, S.C. Kinston, N.C., Birmingham, Ala. and Knoxville, Chattanooga and Nashville, Tenn. It made 47 shipments to the above points during 1966. Ranging from 700 to 1,700 pounds (LTL). Also from Sheridan to Montgomery & Mobile, Ala., Jacksonville, Winterhaven, and Pensacola, Fla., and Brunswick and Augusta, Ga., shipper made 46 shipments collectively in 1966, ranging from 200 to 6,000 pounds (LTL).	Sheridan interchanging at Little Rock with: ETMT, ETAMC, Gordons, Campbell, T.I.M.E., Cole, Delta, Harper, Baggett, Central, and Huckabee.	Wants a fast reliable, single-line service from Little Rock. Wants a two-line haul service available.	Bowman. Shipper has numerous joint-line services available and has no specific complaints about them.
83. (Sub) Rockwell Manufacturing Company, Pittsburg, Pa. Parking meters and valves.	From shipper's plants at Russellville, Ark. and Sulphur Springs, Tex. to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Only volume figures given are from Sulphur Springs (about 180,000 pounds a month), to the Southeast. Ships to Atlanta from Sulphur Springs three to four times a week (LTL).	ANF, Transcon, Overnite, SWT, Mercury, ETMT, Ryder, ETAMC.	Wants single-line service.	Red Ball. Shipper states that Red Ball's service would be more convenient Jones can perform some single-line service. Shipper has several two-line haul carriers available. There are no specific complaints about transit time.
84. (Sub) Power Truck Line, Inc., Searcy, Ark. Common carrier. Holt Truck Line, Inc., Conway, Ark. Common carrier	No specifics given but involves transporting general commodities to points in Arkansas, and Memphis, Tenn.	Red Ball, ANF, Central, Tamiami, Campbell, ETMT, Gordons, T.I.M.E., Ryder.	Wants to interline with applicant.	Bowman.

(Cont'd. ... Index of motor carrier shippers—part two)

(Index)

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (79) Kennecott Corporation, Denver, Colo. ...gage	From Denver to Atlanta, Ga. ... shipped pounds a year; from shipper's Atlanta warehouse to points in Louisiana and Mississippi ... pounds a year). Each shipment weighs about 25 pounds. From Birmingham, Ala., to Atlanta it ships ... pounds a year.	Texas, Rock, Hyder, Georgia Mex. Motor, Jordan, Blue Lights)	wants faster and consistent ...-service service. Allows 7 days for delivery.	Ref Bell. Several existing carriers offer single-line service from Atlanta to points in the destination States.
2. (-19 Gardner Denver Co., Denver, Colo. Mining and construction equipment	From Denver to Atlanta, Ga., and Birmingham, Ala., and return. Outbound about 4,,000 pounds monthly and inbound about 1 shipments monthly weighing 25 pounds each.	Watson-Wilson, MC, Lackey, P.I.E., ABA, Red Ba...	Prefers direct single-line service. Shipper states that average transit time is 9 days, and that transit times now range between 7 days and ... days.	Ref Bell. Watson-Wilson offers single-line service from Denver to Atlanta. No specific complaints.
3. (682) Electron Corporation, Littleton, Colo. Iron and steel shafting, pulleys and sheaves.	From Littleton to Atlanta, Ga., and Birmingham, Ala. About 64,,00 pounds and 27,,75 pounds shipped to respective cities yearly.	Red Ba..., Watson-Wilson, Denver-Chicago, Blue	wants faster service. Prefers single-line service.	Ref Ba...
4. (683) Gates Rubber Co., Denver, Colo. Rubber products	From Denver, Natrona, Miss., and Dallas, Tex., to Atlanta, Ga., and Birmingham, Ala., and from Atlanta, to Birmingham. Between ,,,000 pounds and 4.5 million pounds moves yearly. TL and LTL.	Walker, Mercury, Arkansas Best, MC, I.M.F.S., P.I.E., Watson, Ringsby, C-C, Gordons, Terminal, Hyder, Atlanta Mex., Blue, ABA, Bradley, T.I.M.E., Transcon, Hyder, Watson-Wilson	Inconsistency of existing services. Wants between 3 and 5 days service. Average transit time now is 6 days including weekends.	Ref Bell. Watson-Wilson renders shipper is single-line service to Atlanta. Transit study time does not include wi. shipments during period covered.
5. (720) Ampex Corporation, Colorado Springs, Colo. Tape recorders and parts thereof.	From Colorado Springs to Birmingham, Ala (Sept. 1968: 12 shipments, total weight 19,192 pounds; and Atlanta, Ga (Sept. 1968: 5 shipments total weight ,,,,,, pounds.	Red Ba..., Watson-Wilson, Transcon, Hyder, Watson-Wilson	wants faster single-line service. Loss claims of damage to its product if in two single-line service. Wants start-during service to Birmingham and Atlanta.	Ref Bell. No evidence of poor existing service.
6. (72... Data Parts Company, Pueblo, Colo. Interm. ...bustion engine parts	From Colorado Springs, Colo., to Atlanta, Ga. (69,8... pounds a year & Birmingham, Ala. (7,,,, pounds a year	To Atlanta by Watson-Wilson, Hyder, Transcon, Red Ba..., Bowman, and Denver-Chicago)	Present ...-single service assembly ... line	Ref Bell. No evidence of this service alone
	(Connecticut)			
1. (7... Jewett City	See shipper under Massachusetts heading.			
2. (7...) American Cyanamid Company, Stamford, Conn. Acrylic fibers, cosmetic toiletries, plastic molding compounds, synthetic resins, veterinary biologicals, drugs and medicines.	From wharehouse, Wallingford, and Bridgeport, Conn.; Bound Brook and Princeton, N.J.; Springfield, Mass.; and Pearl River, N.Y., shipment, here to shipper's warehouse at Dallas, Tex. Protective service is required on one half of the movements from Princeton and on 1 percent of the movements from Pearl River. About 1.3 million pounds a year moves from Bound Brook to Dallas; 1.6 million pounds from Springfield, 1 million pounds from Wallingford, million pounds from Princeton, and 1.6 million pounds from Pearl River. Most of this traffic moves in TL lots, but shipper has a consistent, though less frequent, need for LTL service. Shipper expects a ,) percent annual increase in its business through ...r.	Shipper uses the services of motor common carriers, freight forwarders, rails and seatrain joint and sealand service for the movements of products originated from eastern points to Dallas. Trailerlash and Roadway have been used in piggyback service.	Shipper requires split pickup service at Princeton and Pearl River on traffic to Dallas. It would like to pick up at motor carriers on a ...-to service on TL movements for New England, New York, and New Jersey and Dallas, however, shipper must allow 5 days for delivery to Dallas. Transit time is important because sale is by cause disruptions in the manufacturing cycle. To the applications are granted, shipper will terminate most of its use of transportation services other than motor carrier. Shipper believes that trailerlash has not offer consistent service and that Roadway does not render satisfactory transit times. In one TL movement handled by Roadway, the transit time was 5 days (shipped on a Saturday, ...ed, and received ...	Bowman and Johnson. Shipper indicated that it understood that ... no refrigerated equipment was used. I ... it ... wanted the ... authority sought Bowman will reinstate refrigerated service. It uses refrigerated equipment under applicants' name ... and seems ... as satisfactory. Johnson provides shipper temperature controlled service. It can serve all of the origin points at a Bowman cannot serve (Wallingford, Bridgeport, and Bound Brook). Sealand has been used on all the traffic requiring temperature control. For Princeton and Pearl River in the ... months before the hear... shipper has not used ... 's temperature controlled ... service between the East and New England ... ...

Summary of evidence of supporting shippers—Continued

DELAWARE

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (836) Rockford, Del.	See shipper under Massachusetts heading.			
		FLORIDA		
1. (28) Pensacola, Fla.	See shipper under South Carolina heading.			
2. (169) Central Aircraft Corporation, Miami, Fla. Aircraft engines and parts.	Outbound shipments move from Miami to Dallas and Houston, Tex. and through Dallas to points in California. Inbound shipper receives movements from Dallas and Houston and from California as well as from other points. Between 1/1/66 and 8/10/66, shipper had 20 movements to Dallas of which 22 were handled by [illegible] and 4 were handled [illegible] Also, [illegible] two shipments to two California points. One half of the airline traffic would be tendered to Bowman if its application is granted. Shipper receives about three inbound shipments a week by motor carrier and about five inbound shipments a month from Dallas and Houston.	Bowman, Ryder and Central deliver inbound traffic. Bowman originates shipper's outbound traffic.	Shipper wants 3- or 4-day service between Dallas and Miami and 7- or 8-day service between Miami and points in California. Time in transit is important because stock is limited and repairs to airplane engines possible in order to avoid an excessive loss of revenue. Shipper was not satisfied with Ryder's pick-up service and with transit times on the carrier's inbound interline service. Also, in 1963 Ryder mislaid an engine for about a week.	Bowman. Shipper does not control the routing on inbound shipments. It did not cite any specific instance of unsatisfactory service outbound from Miami to Dallas or to Shipper has very little traffic moving outbound to Houston. It is interested primarily in service of inbound traffic.
3. (213) Lakeland, Fla.	See shipper under Georgia heading.			
4. (593) W. Brace, Inc., Pagebar, Inc., Miami, Fla. Metal connectors and cabinets.	From Miami to points in Arkansas, Louisiana, Mississippi, Missouri, Kansas and Texas. About 300,000 pounds every 4 months.	Bowman, Ryder, Central, Terminal.	Difficulty in obtaining pickups, and objects to number of transfers of the freight in transit.	Bowman. Shipper objects to its freight being broken at more than one point.
5. (584) Tandy Leather Co. & American Handicraft., Miami, Fla. Crafts & leather supplies	From Fort Worth, Tex., to Miami. Approximately between 12 and 20 shipments move a month ranging between 250 and 900 pounds.	Bowman, Central, Terminal, Temiami, East Texas, Ryder, Merrin, Red Ball, Transcon.	Joint-line service inadequate.	Bowman.
6. (598) Jennie & Mack, Inc., Miami, Fla. Auto air-conditioners and parts.	From Dallas, Tex., to Miami. About 150,000 pounds moves annually.	Central, Ryder, Transcon, Bowman, Merrin, Terminal, Temiami.	Needs faster service. Wants 5-day service.	Bowman.
7. (648) Sparks Specialty Co., Pensacola, Fla. Tube fittings, valves, tubings, instrumentation equipment and piping accessories.	From Houston, Tex., and Baton Rouge, La., to Pensacola. Shipments range between 15 pounds and 285 pounds.	Mercury, East Texas, Red Ball, MB&R, Central, Georgia, Florida.	Wants faster service. Average days in transit is 7, including weekends. Wants 2-day service.	Bowman, Johnson. Transit time study does not include all shipments.
8. (669) Sinclaird & Valentine Co. Cantonment, Fla. Resin compounds, varnishes, and printing inks.	From Cantonment (Pensacola, Fla.) to Camden, Ark., Memphis, Tenn., Monroe, La., Houston, Texas, and Kansas City, Mo., shipments range between 147 pounds and 33,485 pounds.	G.F.A., Gondona, Southwestern, N. Hall, Mercury, Touch, Merrin.	Joint-line service inadequate. Wants 2-day service. Presently allowing between 4 and 5 days lead time.	Bowman, Johnson.

114 M.C.C.

Summary of evidence of supporting shippers--Continued

(I.C.C.--Continued)

Shipper location and commodities	Weights, destinations, volume, type and frequency of traffic	Existing service utilized	Reason for supporting application	Application supported and remarks
3. (Mfr.) Hygeia Sale Corp., Bottling co., Pensacola, Fla. Vending machines and repair parts thereof.	From Pensacola, Fla., to Kansas City, Mo., to Pensacola shipments range between 95 pounds and 1,871 pounds.	Georgia-Florida, Inbound.	Interline service inadequate. Wants faster service. Wants 2-day service. Average transit time 4.1 days.	Bowman. Traffic has covered 25 percent of traffic for 9-month period in 1964.
4. (Mfr.) Pensacola Paper Co., Pensacola, Fla. Paper and paper products.	From Pensacola to Crossett, Ark., across City, and Springfield, Mo., Jonesboro, Longview, Port Arthur, and Texarkana, Tex., and Baton Rouge, La. Ships between 50,000 and 65,000 lbs. a year, mostly in 40' cars. A substantial portion of the above tonnage is transported by rail. From Miami, Fla., to Kansas City, Mo., Irving, Fort Worth, and Dallas, Tex., and Little Rock, North Little Rock and West Memphis, Ark. Shipped in excess of 1,000 pounds in a 4-month period to the above points. (Mfr.)	Mo.-Kans., Kans.-Mo., Southeastern, Pan Am., Jasper, Fluor, Ittner, and West. Bowman, T.I.M.E., Transcon, Jordan.	Has had substantial delays with interline service and has not damage to its product. Wants single-line service which should save one day in transit or takes waste interline rate and fleet equipment. Present service is too slow. Wants Bowman to have single-line service to get faster deliveries. Needs 1- to 2-day service.	Bowman, Johnson. Shipper witness acknowledged that interline service to several points has been good. Bowman. There are several gateways shipper has not tried in joint-line service.
5. (Mfr.) Ansul Co.,Inspection, Marinette, Wis. Prepared packaging materials.	From Miami, Fla., to points in Texas. Ships in excess of 45,000 pounds a month (LTL). Each shipment weighs between 4,000 and 4,500 pounds.	Bowman (encouraging with Transcon, T.I.M.E., Jordan, ETMC, Roler.	Present service is too slow. Wants Bowman to have single-line service. Wants 4-day service to Houston.	Bowman.
6. (Mfr.) Stella Shoe Co., Miami, Fla. Stationery store, leasing complex of land.	From Miami, Fla., to points in Arkansas, Louisiana, Missouri, Mississippi, Texas, and Kansas City, Kans.-Mo. area. Distributes and ships to east and west Texas points. Shipments weigh from a minimum to 1,000 pounds.	Bowman (coordinating with other modes), carriers at Atlanta.	Wants faster delivery and less damage.	Bowman. It appears shipper has very few complaints with existing joint-line service.
7. (Mfr.) Owens-Illinois Glass Co., Miami, Fla. Fiberglass silo, service equipment.	From Kansas City, Mo., to Miami. Receives two shipments a month averaging 20 pounds. From Miami, to points in Louisiana (2 shipments a year), Mississippi (1 a year), Missouri (1 a year), Kansas (1 a year), and Texas (20 shipments in 1963). Shipments range from 20 to 8,000 pounds, averaging between 100 and 400 pounds. (No shipper letter received from shipper since hearing.)	Roler, Bowman, Service, Jordan.	Present rates to Pensacola, Memphis, St. Louis fast enough service. Present service to Dallas wants 1- or 2-day service from Miami to Houston, Tex., and to Mississippi, and Arkansas points, 4-day service to other Texas points and Missouri.	Bowman. Inquiry has revealed service to most points with deliveries made in 3 or 4 days.

Summary of evidence of supporting shippers—Continued

GEORGIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (1) Bird Packaging Company, Atlanta, Ga. Paper products	From Atlanta, in LTL and T. quantities 10 million pounds moved by motor carrier annually to Kansas City and to specified points in Arkansas, Texas, and Louisiana.	Roadway, East Texas, and Tennessee direct to Southwest points. Decatur, Alabama-Georgia Express, Motor Freight Carriers, Marvin, East Texas and Red Ball as interline.	Shipper wants direct service so that it can be competitive with other paper producers located in Texas and Louisiana. Existing service is generally described as inadequate because of equipment shortages, backlogs of freight, unbalanced operations, and general indifference.	Marvin, Deaton, Red Ball, Strickland, Bowman, and Jones - From Atlanta to New Orleans shipper has available the single-line services of Deaton, Dixie Highway, Johnson and Roadway. Shipper maintains a private fleet which, on occasion it uses for movements to points in Texas. It supports the Bowman and Jones applications for authority to serve from Atlanta to points in Arkansas, Missouri and Kansas.
2. (1) The Houston Peanut Co., Columbus, Ga. Salted peanuts, candies, and bakery goods	From Columbus to Houston, Fort Worth, Dallas, and Beaumont, Tex., and Monroe, La. During first 3 months of 1961 it moved, by motor common carrier, 18 shipments to Houston (24,967 pounds); 1 to Fort Worth (45 pounds); 9 to Dallas (12,491 pounds); 5 to Monroe (1,322 pounds); and 1 to Beaumont (1,837 pounds). Expects to ship to, Lafayette, Lake Charles, Houma, Baton Rouge, Alexandria, Shreveport and Monroe, La.	Jack Cole-Dixie interlining with Marvin, Red Ball or Ryder.	Shipper would like to have transit time improved. The availability of prompt, dependable, and consistent service is important. Shipper indicates that it has frequent complaints with respect to transit times.	Marvin. Shipper handles the majority of its traffic from Columbus to points in Texas in its own equipment. It uses for-hire carriers to serve some Texas points and on over-flow shipments. Georgia Highway and Baggett offer interline service from Columbus to specified Texas points. Also some other specified carriers offer interline service from Columbus to the four named Texas points.
3. (1) Colonial Shoe Co., Atlanta, Ga. Imported shoes	From New Orleans, La. to Atlanta. Shipper receives at least one shipment each week weighing between 500 and 5,000 pounds.	Cole-Dixie direct. Also, Johnson direct, Marvin and Harper interlining.	Shipper is not the receiving second-morning delivery it requires. It refuses to use Johnson because it had a problem with one of this carrier's drivers. Although it receives third-morning service from Marvin interlining with Harper, it would like to have Marvin render single-line service.	Marvin. Ryder's application not tried because this carrier informed shipper that it did not want to make daily pickups on shipper's outbound traffic. Shipper has not inquired about the available single-line service from New Orleans to Atlanta. Deaton and Baggett offer single-line service from New Orleans to Atlanta.
4. (6) Shirley of Atlanta, Inc., Atlanta, Ga. Ladies and children's clothing	From Atlanta to points in Texas, New Mexico, Colorado, Mississippi, Louisiana, Arkansas, Oklahoma, and Memphis, Tenn. Shipper has daily LTL movements. It ships 35,000 pounds a week with the average shipment weighing approximately 115 pounds to points in the above-described territory, which is served by Red Ball. Shipper expects outbound shipments to double within the next 2 years because of an expansion program in which it is engaged.	T.I.M.E., Johnson, Watson, Cole, Ryder, Roadway, East Texas, and Bowman originate the traffic. Cole-Dixie interlining with Red Ball are used on shipments to Louisiana. Deaton is used to Mississippi points.	Shipper has had difficulty in obtaining pickup service from Ryder. Sometimes it takes 4 days to obtain service from this carrier after a request is made. Although Deaton holds authority to serve all points in Mississippi, it would not pick up a shipment destined to trade line, Miss.	Red Ball, Marvin, and Johnson. Shipper is satisfied with the service rendered by Roadway to points in Texas. It feels that the 3 or 4-day service rendered by Johnson from Atlanta to New Orleans is not adequate. But, if this carrier is authorized to handle some of shipper's outbound traffic, shipper believes that it would be able to improve the service.
5. (8) Schering Corporation, Chamblee, Ga. Pharmaceuticals	From Chamblee (located within the commercial zone of Atlanta, Ga.) to Jackson and Vicksburg, Miss., and Dallas, Tex. Shipper has one or two LTL shipments weekly to Jackson and Vicksburg. One shipment a month moves from or to Dallas. Its average shipment weighs 100 pounds.	From Atlanta to Jackson shipper uses Dixie, Ryder, Georgia Highway, and PIA. Dixie and Ryder are used to Vicksburg. Between Atlanta and Dallas air service used. Ryder has handled approximately 75 percent of the approximately 96 shipments to Jackson and Vicksburg in 1960.	Shipper has difficulty in obtaining pickup service from Ryder. In one instance there was a delay of 7 days before pickup. Shipper prefers single-line service because its pharmaceuticals are susceptible to damage.	Red Ball. Shipper is only interested in motor carrier service to the two named Mississippi points. While Deaton renders single-line service between Atlanta, Jackson, and Vicksburg, shipper has not utilized this service. Although shipper indicates that the service of Georgia Highway Express is adequate, it had not investigated a service involving Georgia Highway Express from Atlanta to Mobile, Ala. and Red Ball.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (9) Eastman Kodak Company, Chamblee, Ga. Photographic items	From Chamblee shipper annually ships 1.3 million pounds to New Orleans, La., and 940,000 pounds to specified points in Mississippi. It expects its shipments to increase by 25 percent each year through 1971. Its pertinent daily shipments are LTL weighing between 30 and 12,000 pounds. Annually, approximately one-half million pounds is shipped to Jackson, Miss. This represents about 80 percent of the Mississippi traffic. Other Mississippi points include Greenville, Gulfport, Pascagoula, Ocean Springs, Clarksdale, Meridian, and Natchez.	On TL shipments to New Orleans shipper uses Georgia-Florida interlining with Central at Mobile, Ala. On the LTL traffic to New Orleans shipper uses Georgia-Florida interlining with Red Ball or West at Mobile. Ryder is used on truckload shipments to Birmingham and Memphis and on LTL traffic to Birmingham. East Texas handles the LTL traffic to Memphis. Deaton is used to Jackson. Cole-Dixie was used to Jackson. Johnson is used to Pascagoula, Biloxi, Ocean Springs and Gulfport.	Some of its photographic products require delivery within 24 hours hours. Delivery beyond 24 hours necessitates the use of refrigerated service. Cole-Dixie, which holds authority from Atlanta to Jackson informed shipper that it could not provide overnight service between these points and that shipper should find another carrier. During a survey period on shipments to Jackson with transit times between 2 and 4 days; Johnson transported a shipment to Tupelo, Miss. rendering next-day service; Deaton rendered 4-day service on shipment to Meridian, Miss.; Johnson rendered 5-day service on a shipment to Keesler Air Force Base; Georgia Highway rendered 6-day service on a shipment to Hattiesburg; and on a shipment to Ocean Springs Johnson rendered 4-day service. The exhibit did not necessarily show all the shipments to these points during the study period and some of the transit time included intervening weekends.	Red Ball. In support of the Red Ball application is limited to points in Mississippi and to New Orleans. Shipper considers the service it is receiving to Birmingham and Memphis adequate.
7. (11) Knox Glass, Inc., Forest Park, Ga. (located within the commercial zone of Atlanta, Ga.) Glass container products	From Atlanta TL shipments to Baton Rouge, La. and Houston, Tex. Shipper has movements to Houston and expects to commence shipping to Baton Rouge in June 1968.	On movements to Houston, Deaton originates the shipments and interlines at New Orleans, La., with Missouri Pacific Truck, when the movement to Baton Rouge commences Deaton interlining with Popularville will be used.	Shipper expresses a need for Deaton's proposed single-line next-day service to Baton Rouge and second-morning service to Houston on TL.	Deaton. The direct-line services of Transcon, Ryder, Roadway, and E.T.W.F. are available from Atlanta to Houston.
8. (16) Justrite Envelope Manufacturing Co., Atlanta, Ga. Envelopes	Outbound shipments move from Atlanta to Jackson and Greenville, Miss. Shreveport, La., Little Rock, El Dorado and Magnolia, Ark. Birmingham, Ala. and Beaumont, Dallas, Houston, Orange, and Waco, Tex. Inbound shipments are received from Akron, Ohio. It has 55 outbound shipments each month with an average weight of 150 to 250 pounds. During a one year period shipper had about 10 shipments to Houston and 10 to Dallas. Shipper has about two shipments a month to Orange. About 15 shipments a year move to Shreveport and about 3 move to El Dorado and Magnolia. Shipper has one shipment a week to Jackson and one shipment a month to Greenville.	Transcon and T.I.M.E. originate the Arkansas shipments. Cole-Dixie is used to Jackson and Birmingham and Gordons handles shipper's Greenville traffic. East Texas handles shippers Texas and Louisiana shipments. Carriers other than Cole-Dixie are also used on shipments to Birmingham.	Present service is assertedly not always fast enough or consistent and time in transit is an important factor. Shipper is not satisfied with the transit time it receives on shipments to Louisiana, Texas, Mississippi, and Arkansas points. Shipper wants second-day service to points in Arkansas, overnight service to Jackson, second-day service to Louisiana, and second or third-day service to points in Texas. Strickland' responses to most shipper's complaints with respect to these transit times. Shipper had one complaint about the transit time on a shipment to Shreveport handled by East Texas.	Strickland. Shipper was generally satisfied with Cole-Dixie's service to Birmingham. It has not received a complaint on the service to Houston, Dallas and Orange. It did receive one complaint regarding the transit time on a shipment to Beaumont but it could not remember who the carrier was. Although shipper has received some complaints regarding the transit times on shipments to Birmingham, it could not recall which carrier handled the traffic. Shipper did not know how many single-line services were available between Atlanta to Dallas, Waco, and Houston.
9. (17) Carpenter Steel Co., Atlanta, Ga. Stainless steel bars	From Atlanta to Houston and Dallas, Tex., and to other unspecified points in Texas. Approximately 100 shipments move during a year to both Dallas and Houston. Almost all the shipments are LTL weighing an average of 500 pounds. During the period of a year approximately 100 orders moved directly to customers located at unspecified points in Texas.	Transcon handles shipper's inbound and outbound traffic. Roadway's service has been utilized to Houston.	Shipper maintains warehouses in Dallas and Houston. Its Atlanta branch has lost business because the Texas warehouses are supplying their customers from shipper's branches in the Pacific Coast because they are receiving better transit time than they can get from Atlanta. The Pacific Coast branches draw their stock from Pennsylvania and Connecticut, and therefore if its Texas customers received stock from Atlanta, shipper would save on freight charges. Shipper would like to regain this business. It feels that second-or-third day service would secure it of this business. Shipper received 5-day service from Roadway to Houston and sixth-or-seventh day service from Transcon on a shipment to Houston.	Strickland. Shipper believes that only Roadway, Transcon and East Texas, are authorized to perform single-line service from Atlanta to Houston and Dallas, but it status that it has been solicited for this traffic by Mercury and United.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
10. (18) Stanford Company, Cowlay, Ga. (Assorted in the commercial zone of Atlanta, Ga.) Building materials, hardware and floor tile	From Atlanta to Hattiesburg, McComb and Meridian, Miss., Dallas, Tex., and Blytheville, Ark. Shipper receives at least 12 shipments a month from Houston, Tex. It has between 6 and 10 outbound shipments a month with an average weight between 300 and 1,500 pounds. The inbound shipments weigh between 30,000 and 40,000 pounds. They move to either shipper's Atlanta warehouse or directly to shipper's customers located at points in Mississippi, Alabama, and Louisiana. Common carriers handle about one shipment a month to Dallas and shipper uses its own equipment once a month to Dallas.	To Mississippi points shipper uses the services Deaton, Cardona, Dixie, and Ryder. Shipper uses its own equipment in addition to for-hire carriers, on the inbound traffic from Houston. Mercury originates truckload traffic at Houston and interlines it for delivery at Atlanta.	Shipper expresses a need for Strickland's proposed second-day service on the involved traffic.	Strickland. Shipper is not interested in Blytheville since it handles this traffic in its own equipment. It has eight units and uses common carrier to handle overflow traffic. If the application is granted, Strickland would have to interline at Jackson on shipments to Hattiesburg and Meridian. Mercury's service interlining to Atlanta from Houston is described as satisfactory. Shipper did not know how many single-line common carriers are authorized to provide service between Atlanta, Houston and Dallas.
11. (19) (a) Pomona Products Company, Griffin, Ga. Canned fruits and vegetables (b) Southern States, Inc., Hampton, Ga. Electrical equipment (c) United Cotton Goods Company, Griffin, Ga., and Esquin, Tex. Cotton textile (d) Southeastern Textile Corporation, Griffin and Cordele, Ga., and Esquin, Tex. Textiles (e) Sparta Furniture and Manufacturing Company, Inc., Sparta, Ga. Furniture	(a) Pomona's traffic moves from Griffin by rail to points in Texas (mostly to its warehouses located at Dallas, Houston and San Antonio, Tex.) and by private carriage to points in Mississippi, Louisiana, and Arkansas. During 1965, shipper had movements of 600,000 pounds to specified points in Arkansas, 900,000 pounds to Louisiana, 2.1 million pounds to points in Texas. (b) Southern's traffic moves from Hampton to points in Louisiana, Arkansas, and Texas. Between 1/31/66 and 5/13/66 it shipped in private carriage 25,000 pounds to points in Louisiana, 27,000 pounds to Arkansas 68,307 pounds to points in Texas. Between 5/2/66 and 5/20/66 it shipped by common carriage 24,792 pounds to points in Texas, 10,510 pounds to Arkansas, 9,176 pounds to Mississippi, 12,000 to Louisiana. (c) United's traffic moves from Griffin. It ships approximately LTL a day to "all destinations." (d) Southeastern's traffic moves from Griffin and Cordele to points served and proposed to be served by applicant. (e) Sparta's traffic moves from Sparta by rail and motor carrier. It ships about one carload of freight and two TL of freight a week.	Perkins and Ryder originate traffic at Hampton and Griffin. Georgia Highway Express and Akers also originate traffic at Hampton. Overnight originates traffic at Griffin and Hampton. Meadows Freight originates traffic at Sparta. Deaton is used on shipments to points in Mississippi.	(a) Pomona would use applicant's services instead of private carriage and rail if Strickland could provide better service. But even if applicant could provide better service only one third of the rail traffic to Texas would be diverted. (b) Southern States does not have backhauls for its private equipment and if Strickland rendered good transit times it would receive shipper's traffic. (d) Southeastern wants better service with respect to transit time. (e) T.I.M.E. had a restriction on furniture and Dixie has a combination rate restriction to two-line basis to Mississippi and a portion of Louisiana.	All five shippers support Strickland only. Strickland, if its application is granted, would not be able to serve the supporting shipper's plants but it would interline at Atlanta. Inasmuch as applicant also would not be able to service all points in Arkansas, Louisiana and Mississippi, traffic moving to these points would still involve at least three-line hauls. If the application is granted but Strickland does not obtain concurrences with the originating carriers, its services would not be used.
12. (20) Atlanta Freight Bureau, Atlanta, Ga.				The witness was presented by Strickland but indicated that no particular applicant is being supported. The Bureau, a civic, nonprofit traffic and transportation service composed of 550 members which are shippers and receivers of freight left to the judgment of the Commission to determine what proposals might be needed to give adequate service between Atlanta, on the one hand, and, on the other points in the territories applicants seek to serve.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1 (21) Fox nufacturing mpany, Rome, Ga. rniture.	From Rome shipper has about 10 shipments a week to points in Texas, each shipment weighs between 25 and several thousand pounds with the average shipment weighing about 500 pounds. The majority of these shipments move to Dallas, Tex.	Baggett, Georgia Highway, Ryder, and Southern Railway.	Shipper maintains a furniture market and showroom at Dallas and it would like to be able to have samples arrive there on schedule. Baggett has rendered shipper very satisfactory service. Shipper has no direct single-line service from Rome to the Dallas-Fort Worth, Tex., area on furniture. While Ryder holds authority from Rome to Houston, Tex., it generally will not handle shipper's traffic to Houston. Roadway also holds authority from Rome to Houston and Dallas but it will not handle shipper's products. Shipper prefers single-line service because of the fragile nature of furniture. Also tracing would be facilitated and claims would be handled better.	Baggett. Georgia Highway's service is described as satisfactory. This carrier can originate the traffic and interline at Atlanta with any one of a number of carriers holding authority from Atlanta to Dallas. Several carriers also hold single-line authority from Atlanta to Houston and Beaumont. Additionally, Baggett originates the traffic and interlines at Birmingham or Mobile, Ala., with several carriers which hold single-line authority to Houston or Beaumont. This carrier could also interline at New Orleans.
1 (22) General lectric Company, me, Ga. ransformers and witches.	From Rome to Houston and Dallas, Tex. During a representative 3 month period about 122,750 pounds in lots of 20,000 pound averages and 14,000 pounds of LTL traffic varying in size from 50 pounds to 7,000 pounds is shipped to the Dallas and Houston areas.	Bell and C & H have single-line authority to Dallas and Houston and are used on an irregular basis. Southern Railway is used on a regular basis. Baggett's services have also been utilized. And, Mercury has been used as a delivering carrier to Dallas and Houston.	Shipper wants to have direct, single-line service between Rome on the one hand, and on the other, Houston and Dallas. It does not use the single-line service of Roadway and Ryder because these carriers assertedly do not provide it with the type of service it needs. Shipper occasionally requires special equipment.	Baggett. Roadway Express and Ryder have single-line authority from Rome to Houston. And, Roadway has single-line authority to Dallas. Shipper was aware that other carriers can interline with Baggett at Birmingham or Mobile and transport its traffic directly to Dallas or Houston. Shipper has utilized the services of Roadway for 13 years but not to points in the southwest on outbound traffic. Ryder maintains a terminal at Rome.
. (26) Union Camp orporation, New ork, N. Y. Paper roducts, tall oil roducts, turpentine, rosin, and ynthetic plastics.	From shipper's plants located at Savannah, Chamblee (Atlanta) and Stone Mountain, Ga., and from its pulpboard mill at Montgomery, Ala., to points in the Southwest and Kansas City, Mo. From Savannah shipments will move to named representative points in Arkansas, Mississippi, Texas, Louisiana, and to Kansas City, Mo., and Tulsa, Okla. From Stone Mountain shipments move to Russellville, Ark., and Kansas City, Kans. From Chamblee shipments move mainly to specified points in Mississippi, Arkansas, and Louisiana. In 1965 shipper moved 1,500 tons by motor carrier from Savannah to points in the involved destination territory, 144 tons from Chamblee, and 96 tons from Stone Mountain. Both TL and LTL shipments will move from Savannah. Only LTL shipments will move from Chamblee and Stone Mountain. Approximately 1.1 million pounds moved from Savannah in TL and LTL lots to Kansas City. This traffic moves between two and four times a month.	From Savannah to Little Rock, Ark., Kansas City, Kans., and Fort Smith, Ark., Bowman originates and interlines with Mercury, Gordons, Jones, Red Line, and Watson-Wilson. To Kansas City, Kans., and Tulsa, Okla., Bowman originates and interlines with Watson-Wilson and Jack Cole. Hall originates traffic to points in Mississippi. Roadway and Herrin have been used in single-line service to points in the Southwest and to Kansas City. McLean originates traffic to Olathe and Topeka, Kans., interlining with Crouch and Freightways. Ryder and Transcon are used from Stone Mountain and Chamblee.	Shipper has had difficulty in obtaining equipment from Roadway. It does not want to have to rely solely on the services of Herrin. Because Herrin's Savannah terminal closes at 6 p.m. some of shipper's traffic can be delayed up to 16 hours in transit time. Shipper introduced an exhibit showing that on specified shipments from Savannah to points in Kansas, Texas, Oklahoma, Arkansas, and Mississippi the transit times were not satisfactory. Arkansas Best refused to interline at Memphis and deliver shipper's traffic to points in Arkansas, Texas, and Oklahoma. From Savannah shipper wants 2- or 3- day service on TL and 3- to 4 day service on LTL to Kansas City and to Topeka and points in Arkansas, Texas and Louisiana. To Mississippi it wants 1- or 2-day service on TL and 3-day service on LTL. From Chamblee and Stone Mountain shipper wants 2-day service on TL, and 3-day service on LTL shipments, to Kansas City; 2 days on TL and 3 days on LTL to Arkansas, Louisiana, and Texas, and to Mississippi, next-day service on TL and 2-or-3 day service on LTL	Bowman, Johnson, Jones. Bowman's service is satisfactory. Brown's service from Savannah to Atlanta is described as good. Herrin's service is discussed as satisfactory. Shipper indicates that if it had the services of Johnson and Bowman in addition to Herrin from Savannah it would have adequate service. Shipper has no complaints with respects to the service of Ryder.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and application	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
16. (32) Wilson Jones Company, Atlanta, Ga. Loose-leaf devices and forms.	Inbound shipper receives shipments from Chicago, Ill., and Elizabeth, N. J. at its Atlanta warehouse. Outbound from Atlanta it ships to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, Vicksburg, and Greenville, Miss. During the first 5-months of 1966 shipper had 144 shipments to points in Mississippi, weighing a total of 19,319 pounds, with the average shipment weighing about 170 pounds.	Johnson is used to Mobile, Ala. and Bowman is used to Birmingham, Ala., Dixie and Georgia Highway are used interlining at Birmingham.	Shipper expresses a need for second-day single-line service to the Mississippi points named. It has limited dock space and therefore wants the number of carriers serving it limited.	Bowman and Johnson. Deaton's service along with that of Bowman, Dixie, and Johnson is described as satisfactory.
17. (33) General Aniline and Film Corporation, New York, N. Y. Photographic and reproduction materials	From shipper's destination center at Atlanta, Ga., to the Jackson, Mississippi area and the Baton Rouge, La., area. Approximately 120,000 pounds a year moves to Mississippi and 10,000 pounds moves to Louisiana annually. During the first 5 months of 1966 shipper had 23 movements weighing a total of 21,210 pounds collectively to Jackson and Vicksburg, Miss. Only three of the shipments moved to Vicksburg.	The single-line services of Dixie and Ryder are used on shipments to Mississippi. Of the 23 shipments moving to Mississippi points in the first months of 1966 Ryder handled only 2.	Shipper wants 2-day service to points in Mississippi. It indicates that its present service is not satisfactory. It receives complaints almost every week about service from one consignee at Jackson.	Bowman and Johnson. Shipper has used the services of Bowman and Johnson and describes them as satisfactory. Shipper has not made an investigation to determine what other services are available from Atlanta to its destination territory.
18. (34) Hamby, Inc., Atlanta, Ga. Chemicals and sanitary supplies	From Atlanta to its 100 customers located at Meridian, Jackson, Laurel, Greenville, Vicksburg and Columbus, Miss., shipper has about 9,000 pounds moving each week. To Laurel it has weekly shipments ranging from 100 to 36,000 pounds. If single-line service were available shipper would have traffic moving to points in Louisiana and Arkansas.	On shipments to the named Mississippi points, United or Alabama Georgia originates the traffic and interlines at Birmingham with Campbell and West. Occasionally Deaton and Baggett originate the traffic. Bowman also originates the Mississippi traffic interlining with West.	Shipper wants second-day service from Atlanta to the named Mississippi points. Baggett holds shipments at Birmingham sometimes as long as 15 days, even though shipper has complained of this practice. Shipper has experienced delays in pickups with Deaton.	Bowman, Johnson and Jones. Ryder has been used on shipments to Mississippi. However, shipper complains of delayed pickups with this carrier. Shipper uses the services of Bowman and Johnson and indicates that they are satisfactory.
19. (36) Briarcliff Mills, Atlanta, Ga. Lingerie	From Atlanta to specified points in Arkansas, Louisiana, Texas, Missouri, Oklahoma, Florida, and Mississippi, during the past 4 months of 1966, shipper had 11 shipments with a total weight of 9,364 pounds and with a average weight of 164 pounds a shipment.	T.I.M.E., Ryder, East Texas, Johnson Gordons, Dixie and Deaton. Additionally shipper uses the Southern Railroad. Johnson handles shipper's Louisiana traffic in single-line service. Dixie and Deaton handle shipper's Mississippi traffic.	Shipper has limited dock space and needs consistent pickup service to keep the dock area from becoming overcrowded. It prefers single-line service and wants second- or third-morning delivery to points in Mississippi; fourth- morning delivery to Arkansas; fourth-morning delivery to Texas; third-morning to Louisiana; and fourth or fifth-morning to Missouri.	Bowman, Johnson, and Jones. Shipper did not know of any direct service to points in Texas. Johnson service to New Orleans, La., is described as good. Shipper complains generally about the pickup service of Ryder after it merged with Hoover. However, it had no complaints with respect to the service rendered by Ryder in first 4 months of 1966. It did not know whether or not there is a single line service from Atlanta to Houston, Dallas, and Fort Worth, Tex., and points in Arkansas. Also, shipper did not know the points T.I.M.E. could serve direct.
20. (45) Black and Decker Company, Atlanta, Ga. Powertools	From Atlanta to Memphis, Tenn., and to New Orleans, Baton Rouge, Lafayette, Harvey, Metairie (both Metairie and Harvey are located within the commercial of New Orleans.) Monroe, Alexandria, New Iberia, Morgan City, and Lake Charles, La. with daily shipments to New Orleans and one or two shipments a week to each of the other points. Shipments range from a minimum weight to 1,500 pounds, with the average shipment weighing between 300 and 500 pounds.	Ryder's and Cole's service have been utilized. Cole is used on shipments to New Orleans.	Shipper is not receiving satisfactory transit time from Cole. It wants the service of a carrier capable of serving all of its destination territory so as to avoid congestion at its loading dock. Shipper attempted to use Baggett's service to New Orleans but could not receive satisfactory pickup service.	Norris. Shipper has not made an investigation to ascertain the availability of carriers to Memphis, New Orleans, or any of the other named destination points. Shipper is satisfied with Ryder's pickup service.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
21. (46) Bayhan of Georgia, Inc., Atlanta, Ga. Wall board, fibre glass, metal mouldings, and adhesives.	From Atlanta to Baton Rouge, New Orleans, Lake Charles, Lafayette, Shreveport, Monroe, and Alexandria, La.; Jackson, Meridian, Biloxi, Gulf Port, Miss.; Little Rock and El Dorado, Ark.; and Dallas, Fort Worth, Houston, Waco, Tex. Shipper has four movements a month to New Orleans; about two movements a month to each of the remaining named Louisiana points; one a month to the Mississippi points and about five times a month to the named Texas points. It expects to ship to the Arkansas points. Its shipments are TL and LTL.	Ryder, Central, Cole Dixie, Johnson, Boston, and Overnight with Herrin. Johnson, Overnight and Ryder used to New Orleans. East Texas is used to Fort Worth and Dallas. Sometimes Overnight originate Houston traffic and interlines it at Macon, Ga., with Herrin.	Shipper has experienced problems with Ryder on pickups and slow delivery.	Herrin and Red Ball.
22. (47) Marsh Wall Products Division of Masonite Corp., Atlanta, Ga. Wall panelling, adhesives and allied products	From Atlanta shipper has daily movements to points in Louisiana, including Baton Rouge, Lafayette, Lake Charles, Harvey, and New Orleans. The shipments range from a minimum weight to 15,000 pounds with the average shipment weighing about 800 pounds.	Johnson, Dixie, and Ryder.	Shipper wants single-line service. Johnson renders good pickup and delivery service. However, when shipper's traffic has to be interlined there are delays. Dixie renders good pickups service but shipper has had complaints with respect to its transit times. Because shipper's product is susceptible to damage it does not want to have to rely on interline service.	Herrin and Johnson. Shipper has had some difficulty in obtaining pickup service from Ryder. Boston and Baggett hold authority from Atlanta to New Orleans. Shipper has used Boston.
23. (48) Life Time Foam Products, Franklin Parks, Illinois Mattress covering and ticking	From shipper's Conyers, Ga., plant to its plant at Mesquite (which is located in the Dallas, Tex. commercial zone) and Houston, Tex. Shipper has 50 to 75 expedited movements a month to the two Texas points with an average weight of 500 pounds.	East Texas, Ryder, and Roadway are used from Atlanta to Houston, and Transcon and East Texas to Mesquite. Owens originated the traffic at Conyers and interliners at Atlanta with the above-named carrier. Shipper, however, has commenced using its own equipment to deliver the shipments to Atlanta. Roadway and Johnson made pickups at Conyers for a short period. Roadway and Gordons were used from Atlanta to Mesquite.	Shipper wants between 2- 4-day service from Atlanta to Houston. It must be consistent service. East Texas is not rendering consistent service from Atlanta to Houston. Shipper introduced an exhibit showing transit time for a 6-month period from Conyers to the two Texas points. To Houston shipper received between 3- and 8-day service. To Mesquite it received between 3- and 9-day service. Intervening week-ends and holidays were included in computing the transit times.	Strickland. Roadway holds single-line authority from Conyers to Mesquite and Houston. Shipper's use of its own equipment from Conyers to Atlanta has improved transit time to the Texas points. It will continue handling the portion of the movement even if the application is granted. Shipper would rather have consistent 4-day service than have some shipments delivered in 2-days and others delivered in 3- or 4-days.
24. (49) Warner-Silmwear Lingerie Co., Chamblee, Ga. (Atlanta) Ladies foundation garments	From Atlanta shipper moves between one and five shipments each day weighing between 70 and 300 pounds to New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lafayette, and Lake Charles, La., and between two and six shipments a day weighing between 60 and 300 pounds, with some shipments weighing 1,000 pounds, to Dallas, Fort Worth, Beaumont, Waco, Galveston, Laredo, and San Antonio, Tex.	Johnson, Dixie, Cordons, East Texas, Georgia Highway, and Ryder. Gordons is used to Dallas and Fort Worth in single-line service.	Shipper has experienced problems with the pickup service of Georgia Highway and Dixie.	Herrin and Red Ball. Ryder has taken shipper off regular pickup list. Shipper avers that Roadway offers single-line service to Fort Worth and Dallas, and that Johnson, Ryder, Boston, Baggett, and Dixie offer single-line service to New Orleans.
25. (51) Cochran and Company, Atlanta, Ga. Brass fittings	Inbound shipper receives one movement a week from Nacogdoches, Tex. The movements are in LTL lots and weigh about 5,000 pounds. Occasionally shipper has a TL movement.	Shipper had used Red Ball and Bowman interlining at Memphis, Tenn. It terminated this routing and began using Ryder or East Texas as the delivering carrier through Shreveport, La.	Shipper introduced an exhibit which indicates that on 23 shipments picked at random or selected to show both poor and good service it received inconsistent and inadequate service. The shipments moved from Nacogdoches to Atlanta between 5/27/65 and 7/16/65. All but two of the shipments involved weekends. Most of the shipments had a transit time of 5 days including weekends and the transit times varied from 3 to 10 days including weekends. The shipment requiring 10 days was delivered by Bowman. Shipper wants single-line, 2-day service from Nacogdoches to Atlanta. It would be satisfied with Herrin's proposed Friday to Monday or Tuesday service.	Herrin, Bowman, Johnson, and Strickland. Herrin and Red Ball are the only applicants authorized to serve Nacogdoches.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
26. (54) Avon Products, Atlanta, Ga. Toilet preparations and related items	From Atlanta to all points in the territory Red Ball presently serves primarily shipments will move to Jackson, Miss., and Alexandria, Baton Rouge, and Shreveport, La. Approximately 130,000 pounds moves monthly with the average weight of each shipment between 200 and 5,000 pounds.	To Shreveport shipper uses two-line haul of Cole and Red Ball interlining at Jackson. To Baton Rouge it uses Cole interlining with SAIA at New Orleans. Johnson was used to originate shipments to Baton Rouge. To Alexandria shipper uses Cole interlining with Red Ball. Shipper uses Cole to Jackson.	Shipper has had difficulty in receiving scheduled service on shipments handled in interline service. Shipper supports Red Ball to Jackson because it does not have the selection of carriers it would like.	Red Ball. Shipper is aware that to Jackson it has the direct, single-line services of Cole, Deaton, and Ryder.
27. (55) Lathem Time Recorder, Atlanta, Ga. Time recording machines, equipment, and supplies	From Atlanta shipper has about 50 to 75 movements each month to these points in Texas and Louisiana served by Red Ball. Shipper's average movement weighs about 100 pounds.	On westbound traffic from Atlanta, shipper uses T.I.M.E., Transcon, Ryder, G.F.A., Watson-Wilson, Gordons, Ennis, R.E.A., and on occasion, Johnson.	Shipper wants single-line service.	Red Ball.
28. (56) E. R. Squibb & Sons, Division of Olin Machinson Chemical Corporation, Atlanta, Ga. Drugs and medicines, toilet preparations and related merchandise.	From Atlanta shipments move to Jackson, Greenville, Vicksburg, Natchez, and Gulfport, Miss., and Mobile, Ala. Shipper is primarily concerned with points in Mississippi, especially Jackson. In the first 3 months of 1965 it had 130 shipments from Atlanta to Jackson, varying in weight between 16 and 563 pounds. For the same period in 1964 it had 127 shipments to Jackson, with the average shipment weighing about 300 pounds.	To Jackson, shipper uses REA and Alabama Georgia Express interlining with Hunt. To Natchez it uses REA and GFA. To Vicksburg it uses REA and also GFA to Mobile, Ala. interlining with Red Ball.	Shipper's traffic must often have protection in transit from heat and cold. It stopped using Ennis to Jackson because of customer complaints regarding transit time. Consistency of service is important because shipper's customers do not maintain large inventories. Expedited service is required in pharmaceuticals and on shipments to hospitals. Shipper has limited loading facilities and wants the services of a carrier that can serve all of the involved points so that congestion at the loading dock can be avoided.	Red Ball. Shipper was aware that Cole had single-line authority to Jackson. It indicated that it was willing to to try Ryder's direct, single-line service to Vicksburg and Jackson. It is not seeking service to Mobile. Shipper had not tried service of Ennis after it changed ownership.
29. (58) Jonas Manufacturing Company, Michigan City, Ind. Plumbing specialties	From shipper's Atlanta warehouse small LTL shipments move weekly to Baton Rouge, Monroe, and Shreveport, La.; once a month to Dallas; and occasionally to the Houston area. The average shipment weighs 300 pounds.	To the three Louisiana points shipper uses Johnson to New Orleans interlining with a connecting carrier. Roadway is used to Dallas and Houston and East Texas to Dallas.	Because of poor transit times from Atlanta to Louisiana shipper had to commence supplying its Louisiana customers from its smaller Dallas warehouse. If it received second-day service to the named points in Louisiana from its Atlanta warehouse it believes it would be able to again serve its Louisiana customers from Atlanta.	Deaton. Shipper uses Deaton to Jackson, Miss., and is satisfied with the service.
30. (61) Coats & Clark's Sales Corp., New York, N. Y. Cotton thread and yarn, zippers, wool, and synthetic yarns and related sewing articles	From shipper's Atlanta warehouse it has two TL a week moving to its Dallas, Tex. warehouse. Between 1/1/64 and 5/31/64 shipper had 40 movements to Dallas weighing a total of 1.3 million pounds.	Deaton originates the shipper's traffic and interlines at Greenville, Miss. with Jones.	Shipper computerized its stock control on a 2-day transportation service basis and consistent transit times are therefore important. Shipper prefers single-line service and expresses a need for Deaton's proposed 2-day service.	Deaton. Shipper's experiences with the Deaton-Jones service has generally been good. It has experienced only a few instances of inadequate service when Jones was unable to supply tractors at the interchange point. Shipper is aware that Roadway had single-line authority to Dallas but did not know for sure which other carriers held single-line authority to this point. It did not investigate other joint-line services because it has been satisfied with the service of Jones and Deaton.

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...mary of evidence of supporting shippers—continued

ICC M—(continued)

Shipper, location and commodity	Origin, destination, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
...Atlanta, Ga. ...ufacturer of ...ical preparations, and ...ceutical sundries	...Atlanta to Jackson and Greenville, Miss. Shipments ...average between 10 and 15 pounds. Shipper has ...Atlanta truck which ...daily, returning to Atlanta ...days	Line is used to ...intrastate traffic.	...Shipper has discontinued ...from Atlanta to Jackson and Greenville and instead delivers are made from its own warehouse in Atlanta. Jackson facilities make of transportation present no ...to shipments from Atlanta. It wants the traffic to Jackson and Greenville to come from Atlanta. But in order to do this it must have overnight service. Shipper has received complaints from its Mississippi customers with respect to slow delivery time with the existing service. In one shipment to Greenville made by Southern delivery did not take place until 13 calendar days after pickup. Shipper wants next-day service, including week-ends and holidays, to Jackson and Greenville, and second or third-day service to other points in Mississippi served through Jackson or Greenville. Shipper prefers single-line service. It wants next-day service to Birmingham. Shipper anticipated that truck shipments to Mississippi points were cost.	Brown, etc. Shipper was not aware of any single-line service from Atlanta to Jackson and Greenville.
...Atlanta, Ga. ...Drug ...facturer, ...ceutical ...ations, and ...ceutical ...ture, ...ceutical ...ceutical ...ceutical	...and truck Atlanta shipments to ... Birmingham, Miss. and ... Jackson, Mississippi. ... Each month shipper has ... shipments with the average weight of ... pounds.	...Line, Seaboard, Atlantic Coast Line, Georgia, and Georgia Railway are used to Birmingham. Georgia Railway is used to Birmingham.	...Shipper has received complaints from its Mississippi customers with respect to slow delivery time with the existing service. In one shipment to Greenville made by Southern delivery did not take place until 13 calendar days after pickup. Shipper wants next-day service, including week-ends and holidays, to Jackson and Greenville, and second or third-day service to other points in Mississippi served through Jackson or Greenville. Shipper prefers single-line service. It wants next-day service to Birmingham. Shipper anticipated that truck shipments to Mississippi points were cost.	Johnson, Pat Bell, and Strickland. Shipper was not aware of any single-line service from Atlanta to Hattiesburg and Vicksburg, Miss. The service introduced by shipper involved ... shipments during a ... period while 2,40... shipments were handled for it during this same period.
...Atlanta, Ga. ...ufacturer of ...ceutical ...ations, ...ceutical ...ceutical ...ceutical	...from Atlanta to points in Texas, during the first ... months of 1961 shipper had ... shipments to or through Texas points (export sales to ... from Atlanta. The shipments ... a total of ... pounds with the average shipment ... pounds. Shipper expected to ... in volume in 1962 and possibly ... it is not.	Baggett, T.P.F.E., T.&P., Tex.-N., Tex.-Mex., and Santa Fe.	Shipper has a problem with congestion at its loading dock. It can only load two trailers at the same time. It uses Baggett to points in the S.W.T., Southwest, Mississippi, and Louisiana. It intends to ship all western bound traffic with Baggett even though it would have to be interlined at Dallas or Houston, Tex. Shipper wants 1-day to 2-day service to points in Texas. It would need protective service occasionally since it does not manufacture heavy which has a low melting point during the summer months. Shipper prefers single-line service. Order has not always been picked up when called.	Baggett. Shipper has used Baggett's service and found it to be excellent. It has not investigated to determine how many single-line carriers there are between Atlanta and Dallas and San Antonio, Tex.
...Inc. (75) Atlanta, Ga. ...Inc. (76) Augusta, Ga.	See shipper under Texas list. See shipper under Massachusetts heading.			
...Inc. (77) Doraville Confectionery Company, Inc., Atlanta, Ga. Candy and confectionery	From Atlanta shipper has weekly movements to Shreveport (5,000 pounds), Bossier City (1,...0 pounds), Baton Rouge (4,000 pounds), Monroe (3,000 pounds), and Jackson, La. (5,000 pounds). The shipments are LTL weighing on the average 750 pounds. Shipper is not able to ship to its customers at Clarksdale, Greenville, and Greenwood, Miss. and, among other points, Hot Springs, Little Rock, and Pine Bluff, Ark. during the summer months. If it had refrigerated service it would ship 10,000 to 20,000 pounds a week to Little Rock and Pine Bluff, about ... shipments weighing collectively 1,500 pounds to Clarksdale weekly, and about 10,000 pounds each to Greenville and Greenwood weekly.	East Texas Bandag shipper's traffic to Shreveport. Alternate is used to Baton Rouge.	Inasmuch as shippers commodities are perishable during the summer months it needs protective service. During the colder months shipper uses common carrier. However, during the warm months shipper uses carriers which can furnish refrigerated service. It has used dry ice to protect its remedies but this limits its shipping time and causes dampness in the inner carton. Shipper wants Jonsanco's proposed second-day service to the named Louisiana points. East Texas requested that shipper not tender its traffic to Bossier City and Monroe during the warm months.	Strickland, Johnson, and Jones.
...Inc. (80) Reid-Provident Laboratories, Inc., Atlanta, Ga. Drugs	From Atlanta shipments move to all of the southern States, St. Louis, Mo., New York, Rhode Island, and Massachusetts. Its total outbound traffic each month amounts to between 20,000 and 25,000 pounds. The average shipment weights between 400 and 500 pounds. To Baton Rouge, La. shipper has two movements a month weighing a total of about 900 pounds. To Shreveport, La. it has one or two shipments a month each weighing about 150 pounds. Shipper anticipates having movements to Houston, Fort Worth, and Dallas, Tex.	Jonsanco interlining with RAIA is used to Baton Rouge. Also, Johnson interline service is used to Shreveport.	Shipper has been using Ryder to Baton Rouge but it was having difficulty in obtaining pickups. Shipper has only one loading dock available and it wants to limit the number of carriers serving it.	Brown and Johnson. Shipper is generally satisfied with the present service to Baton Rouge. It was not aware how many single-line carriers are authorized to operate between Atlanta, Dallas and Houston. No investigation has been made of the service available between Atlanta and these two Texas points and there are no complaints about service to these points.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
38. (86) Quality Push Envelope Co., Inc., Atlanta, Ga. Envelopes.	From Atlanta shipper has a shipment every 2 or 3 weeks weighing 20,000 to 25,000 pounds to Dallas, Tex.; every 2 weeks weighing 600 pounds to Columbus, Miss.; every 2 weeks weighing 800 pounds to Greenwood, Miss.; every 2 weeks weighing 400 pounds to Laurel, Miss.; every 3 weeks weighing 300 pounds to Meridian, Miss.; every 3 weeks weighing 450 pounds to Vicksburg, Miss.; every week weighing 800 pounds to Greenville, Miss.; and every 2 weeks weighing 1,000 pounds to Jackson, Miss.	To Dallas shipments have been handled by Gordons. To Mississippi shipper has used Dixie and Boston and Georgia Highway interlining with Campbell, GFA interlining with West, and Johnson interlining with West.	Shipper wants single-line service to the destination territory. It has received a few complaints with respect to Gordons' service to Dallas. Between November 1965 and June 1966 shipper had to trace three shipments handled by Gordons. Gordons service has improved. Shipper has received numerous complaints regarding the single-line service of Boston and Dixie to Mississippi points. Shipper wants second- or third-morning service to Dallas, and second-morning service to points in Mississippi. It lost one customer at Natchez, Miss. because of poor motor carrier service.	Bowman and Johnson. Shipper uses the services of Bowman and Johnson and has found both to be satisfactory. Shipper indicated that Gordons, East Texas, and Roadway have single-line service to Dallas from Atlanta with respect to the points to which shipper has had difficulties with Boston and Dixie, namely, Tupelo, Columbia, Kosciusko, Brookhaven, Aberdeen, and Corinth, Miss., shipper indicates that neither Johnson nor Bowman propose to serve these points. Johnson, Jones, and Bowman.
39. (87) Decolin, Inc., Atlanta, Ga. Wallpaper and wall covering	From Atlanta to specified points in Mississippi, Louisiana, Texas, Oklahoma, and Missouri. From points in the New York, N. Y. commercial zone, Wharton, N. J. and Passaic, N. Y. to Dallas and Houston, Tex. The shipments from New York City move principally in LTL lots and average 1,500 pounds a week. The shipments from Wharton move almost daily and weigh between 1,000 and 8,000 pounds.	From New York City to Dallas and Houston, shipper is using Johnson, R.C., and Akers and their connections. T.I.M.E. is used to Oklahoma and Missouri. East Texas is used on shipments to points in Texas. Johnson is used to Louisiana, and Roadway has been used to St. Louis, Mo. and Houston, Tex. Republic Carloading has been used from Wharton and Buchanan to Dallas.	From Atlanta shipper wants second- or third-morning delivery to Texas, Arkansas, Missouri, and Kansas City. Third day service to Oklahoma and second-day service to Mississippi and Louisiana points is requested. During the first 9 months of 1966 shipper had 11 movements totaling 3,965 pounds handled by Republic Carloading from Wharton and Buchanan to Dallas. Including weekends the average transit time was 6 days.	
40. (89) Covenant Carpet, Dalton, Ga. Carpet	From Dalton to Dallas, Houston, and Fort Worth, Tex. Between 1/1/66 and 5/31/66 shipper had 35 movements to Houston weighing a total of 40,849 pounds; 23 TL to Dallas weighing a total of 189,819 pounds; and 9 movements to Fort Worth weighing a total of 7,790 pounds. All of the shipments to Fort Worth and Houston are to customers. It has a distribution warehouse at Dallas and additionally ships directly from Dalton to customers located at Dallas. Each Friday shipper has a TL movement to Dallas. The above tonnage figures to Dallas include 78,000 pounds shipped by rail.	From Dalton to Dallas shipper has used Gordons, East Texas, Roadway, Mercury and the Rock Island and Missouri-Pacific Railroads. Only Roadway provides single-line service. Georgia Highway originates and interlines with Gordons and East Texas at Atlanta, Ga., and Mercury at Birmingham. Shipper also uses private carriage to the three Texas points. Roadway also handles shipper's Fort Worth and Houston traffic.	Shipper prefers single-line service. It is not satisfied with the transit time of Roadway. On two occasions Gordons would not accept the Friday TL movement to Dallas until Tuesday. On the Friday TL movements shipper wants delivery by the following Tuesday. On LTL traffic it wants 3-day service when it is handled in single-line service and 4-day service when it is interlined. Shipper introduced an exhibit showing transit times including weekends on 17 randomly picked shipments to Texas and Oklahoma points. To Dallas, Georgia Highway interlining with Mercury delivered one shipment in 4 days; two in 5 days, and one in 12 days. Roadway to Dallas delivered two shipments in 5 days; three in 6 days; and one shipment in 8 days. Georgia Highway interlining with Mercury to Houston, delivered one shipment in 4 days and one in 5 days. Roadway handled one shipment to Houston in 7 days and one to Waco, Tex. in 7 days.	Bowman, Johnson, and Jones. Shipper uses Bowman's service and is satisfied with it. Johnson and Jones would handle shipper's traffic from Atlanta with Georgia Highway originating it. Shipper could not cite one instance in the year before the hearing when it had lost business because of a lack of transportation service. It has not routed its shipments to Dallas and Fort Worth by Bowman originating and interlining with Jones at Memphis, Tenn. because it was not aware of such service until a few weeks before the hearing. It plans, however, to use this routing if it can obtain good service.
41. (90) Montrose Co., Atlanta, Ga. Tractor parts.	From Atlanta to Baton Rouge and Monroe, La.; Dallas, Fort Worth, and Houston, Tex.; and Hattiesburg, Laurel, and Jackson, Miss. All of the shipments are in LTL lots of approximately 2,000 to 3,000 pounds. Five or six shipments a month move from Atlanta to these points. Also, shipper has occasional movements from its warehouse at Dallas to Atlanta. The shipments to Baton Rouge and Monroe move only when shipper's Dallas warehouse does not have the items. During 1966 shipper had between 25 and 30 shipments to Jackson.	Ryder has handled the shipments to Baton Rouge and Monroe. To Houston, East Texas, Roadway and Ryder have been used. To Dallas and Fort Worth Gordons, Roadway, and Transcon have been used. Cole was used on shipments to Jackson. GFA interlining with West is used to Hattiesburg and Laurel. Johnson has been used in single-line service and in interline service to Laurel.	Shipper has experienced difficulties with existing service. It prefers single-line service. In 1965 shipments to Baton Rouge and Monroe were switched from Atlanta to Dallas because customers complained about transit times from Atlanta. Shipper has received a number of complaints regarding the interline service of GFA and West to Hattiesburg and Laurel. Shipper complains that Cole picked up a shipment on 2/2/66 and when shipper called Cole the following day it was still on Coles dock. Roadway's service is assertedly generally unsatisfactory. The only specific problem shipper has had with East Texas was with respect to the transit time requested on one shipment which moved in January 1966.	Bowman, Johnson, Jones, and Floyd & Beasley. Johnson single-line service has been used by shipper and it has found the service satisfactory. Shipper believes that the only single-line service between Atlanta and Jackson is Dixie. It has not made an investigation to determine if there is other single-line service between these points.
42. (91) Frieden, Inc., Atlanta, Ga. Electronic calculators	Outbound from Atlanta shipments move about twice a week to its branch offices at Lafayette, Lake Charles, Baton Rouge, and Shreveport, La., and Beaumont, Dallas, Fort Worth, and Houston, Tex. Inbound shipper receives machines at Atlanta for repairs from the above-named points. The shipments weigh between 12 pounds and 65 pounds.	Ryder, Dixie, Greyhound Bus, Air Freight, East Texas, and Transcon.	Shipper wants a consistent second-day service. Transit time is important to shipper. It has had to rely heavily on bus service to get expeditious service. With Ryder shipper indicates that it experienced difficulties in getting pick-up service.	Herrin. The service it has received from bus lines is described as satisfactory.

Summary of evidence of supporting shippers—Continued

ATLANTA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
93. (96) Chicago Pneumatic Tool Company, Atlanta, Ga. Pneumatic tools and parts and air compressors and parts.	From Atlanta to points in Louisiana, such as New Orleans, Harvey, Baton Rouge, Alexandria, Shreveport, and Lake Charles, and to points in Texas, such as Houston, Dallas, Fort Worth, and Beaumont. Shipments range in size from 70 pounds to 9,000 pounds, with the average shipment weighing 900 pounds. Shipper has two movements a week to New Orleans weekly.	Roadway, Ryder and Georgia Highway in connection with Mercury have been used on this traffic.	Shipper cannot obtain pickup service from Ryder. It has had complaints as the transit times to Louisiana points.	Herrin. Shipper has no complaints with respect to the transit times on shipments handled by Roadway. It has no complaints on Johnson's service to New Orleans and does not support Herrin for authority to New Orleans.
96. (97) Will Scientific, Inc., of Georgia, Atlanta, Ga. Scientific instruments, chemicals, and laboratory glassware.	From Atlanta to Taft and Mahoville, La. Shipper has two movements a week to both Taft and Mahoville. The shipments weigh between 5 and 800 pounds.	Ryder interlining with Pacific is used to Taft. Dixie, REA and Air Freight are also used to Taft. With shipments handled by REA, consignee must pick-up the shipments at Luling, La.	Time in transit is important to shipper since its products are used on research projects. Shipper has received complaints from Taft and Mahoville customers relating to transit time and breakage with the existing service.	Herrin.
97. (99) Williamson Southern, Inc., Atlanta, Ga. Coated pulpboard, synthetic gums or resins, cartons of rubber compounds, chemical solutions, and rubber coated cloth.	From Atlanta shipments are made weekly to Monroe, New Orleans, Hodge, Bogalusa, and Zee, La., Jacksonville and Orange, Tex., Crossett and Pine Bluff, Ark. Approximately 10,000 pounds moves outbound a month, and shipments varying in weight between 80 and 8,000 pounds. About 100 pounds moves to New Orleans monthly, and approximately 1,900 pounds moves to Pine Bluff monthly. Shipments to Orange and New Orleans move mostly from shipper's Dallas, Tex., facility because of the better service it receives from this point.	T.I.M.E., Lost Texas, Gordons, Cole, and Johnson are used in this traffic. Johnson and A.R.C. handle the New Orleans traffic in single-line service. Cole and Red Ball interline at Jackson, Miss., on the Monroe, Hodge, Zee, and Bogalusa traffic. East Texas handles Orange and Jacksonville traffic in single-line service.	Shipper generally has received complaints indicating that the transit times on its shipments to the involved points is slow, and that shipments have been lost.	Red Ball and Johnson. Shipper has used the services of Red Ball and Johnson and describes them as satisfactory. It has not had any complaints on the Atlanta to Shreveport traffic which Johnson proposes to handle. Shipper's customer in New Orleans has specified that it wants Red Ball to transport its shipments from Dallas because it gets better service from Dallas than it gets from Johnson from Atlanta. Shipper did not know that there are four other carriers besides Johnson offering single-line service from Atlanta to New Orleans.
98. (100) Yates American Machine Company, Atlanta, Ga. Woodwork machines, woodwork machine parts, planer and chipper knives and veneer tape.	From Atlanta shipper moves about 5,000 pounds a week to points in East Texas; Louisiana, Mississippi; and Arkansas. The average weight of the shipment is about 90 pounds. Shipments move to Covington, Jacksonville, St. Augustine, Center, Jasper, and Livingston, Tex., among other unspecified points in this State.	Cole, Dixie, Baggett, Bowman, and T.I.M.E. Dixie originates the traffic to the Louisiana and Texas points. T.I.M.E. performs a single-line service to some of the Arkansas points.	Shipper has received complaints from consignees in Texas and Louisiana regarding the existing motor carrier service. It normally allows 7 days for delivery to two points in Louisiana. Shipper has experienced difficulty in obtaining pickup service for Ryder. It has experienced difficulty in tracing interline shipments which were originated by Dixie. Dixie responds to the tracers in a reasonable time but the connecting carriers take 2 or 3 weeks to reply. One of the connecting carriers is Red Ball.	Red Ball and Herrin.
97. (101) Westinghouse Parts Center, Atlanta, Ga. Appliance parts	Outbound from Atlanta shipper has about 19 shipments a month to New Orleans, La.; 4 shipments a month to Shreveport; 6 a week to Baton Rouge, La.; 1 or 2 a month to Morgan City, La.; 1 or more a month to Natchez, Miss.; 3 a month to Alexandria, La.; 3 a month to Lafayette, La.; and on several occasions to other specified Louisiana points. Shipper also has occasional movements from Atlanta to Jackson, Miss., and ships to a portion of Texas and to Alabama. Shipper's outbound tonnage is approximately 3,000 pounds a week with the average shipment weighing about 90 pounds. Inbound, shipper receives at Atlanta about 25 shipments a month of retained parts from the above-specified points. The total monthly tonnage is about 2,000 pounds with the average shipment weighing 80 pounds.	Johnson, Georgia Highway, R.E.A. and bus service. Cole and Ryder are used at a customer's direction. Johnson originates traffic to all of the Louisiana points and interlines it with connecting carriers. It renders single-line service to New Orleans.	Time in transit is important to shipper ... customers do not carry large inventories. Most of its shipments are of an emergency nature. Shipper has had complaints from customers located in the destination territory about transit times. Shipper prefers single-line service because it lessens the risk of damage. It is supporting these two applications so that it will have a choice of service.	Red Ball and Johnson.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
48. (103) Orkin Exterminating Co., Inc., Atlanta, Ga. Metal agricultural insecticide liquids, agricultural insecticide dusts and related articles and cosmetics.	From Atlanta shipper has movements to points in Louisiana, Colorado, Texas, New Mexico, Arkansas, and Mississippi. Approximately 480,000 pounds moves these points annually. The average shipment weighs between 30 pounds and 500 pounds. Shipper has branches at 12 Texas points including Dallas, Beaumont, El Paso, Fort Worth, San Antonio, Houston, Austin, Corpus Christi; and Lubbock, Tex., and at 15 Louisiana points including Baton Rouge, New Orleans, Lafayette, Alexandria, Monroe, Shreveport, Lake Charles, New Iberia, and Crowley, La. It has a monthly shipment moving to each of its branches from Atlanta. Additionally during the month it has "fill-in" orders to the branches.	Cole, Denton, Bowman, Dixie, Transcon, REA, T.I.M.E., Gordons, and Johnson. Dixie originates shippers Texas and Louisiana traffic and interlines at Jackson, Miss.	Shipper has received complaints from its branches regarding transit times. It prefers single-line service because it can obtain better service, faster delivery, and there is less chance or loss. Shipper expresses a need for the proposed second-day service to points in Texas and Louisiana and first-day service to New Orleans and Jackson. Shipper introduced an exhibit covering 53 shipments between 7/2/55 and 4/15/56. As here pertinent the shipments moved from Atlanta to points in Texas and Louisiana. They involve about 50 percent of the traffic to these destinations and are listed because shipper received a complaint regarding each shipment. All of them were originated by Dixie-Cole and interlined with Red Ball. Including weekends two shipments were delivered to Baton Rouge in 2 days. Including weekends the transit times to destinations in these two States ranged between 3 and 7 days. One shipment to Beaumont involved 9 days.	Red Ball and Morrin. Shipper is primarily interested in service to Texas and Louisiana points. It is only aware of the single-line service of Roadway and East Texas from Atlanta to Fort Worth, Dallas, Houston, Austin, and San Antonio.
49. (103) Printpak, Inc., Atlanta, Ga. Cellophane or plastic bags, packages and wrappers.	From Atlanta shipper has LTL movements twice a month to Abbeville, Lafayette, and Rayne, La. weighing 900 pounds to 5,000 pounds each. Additionally four or five times a year it has T. shipments averaging 30,000 pounds. Shipper also has one movement a week to Baton Rouge, La., weighing between 1,500 and 2,000 pounds, and one a week to New Orleans, La., weighing 2,000 pounds or more. Shipments move to Alexandria, La., about once or twice a month and weigh about 2,000 pounds.	Ryder, Dixie, Johnson, Bowman, and Central. Bowman originates the Abbeville, Lafayette, and Rayne shipments and interlines at Memphis, Tenn. with Morrin. Ryder is used to Baton Rouge and was used to Alexandria. Central is used to New Orleans. Johnson also handles this traffic, and Dixie has been used to New Orleans. Johnson also interlines shipments at New Orleans. Sain is used into Abbeville and Rayne.	Shipper prefers single-line service. It has received complaints with respect to delayed service. And, it has complained to Johnson regarding shipments to or through New Orleans. Five days are allowed for delivery in interline shipments to Abbeville, Lafayette, and Rayne. Shipper is not satisfied with Ryder's service because of delays in deliveries. It has had difficulty in tracing shipments.	Morrin. Shipper was not able to give specific example of the inadequacies of Ryder's service. Dixie's service to New Orleans was only tried once or twice.
50. (104) Roberts Corporation, Decatur, Ga. (Atlanta). Refrigeration and cooling insulating material.	From Atlanta shipper has two or three shipments a week to Alexandria, Baton Rouge, Lafayette, Lake Charles, Monroe, New Orleans, and Shreveport, La.; Little Rock and El Dorado, Ark.; and Beaumont, Tex. The shipments weigh between 50 and 500 pounds. About two shipments a month move to New Orleans.	To Louisiana and Texas Ryder, Johnson, and Cole have been used. To Arkansas shipper has used Gordons. East Texas is used to Shreveport and Beaumont.	Shipper has experienced poor pickup service with Ryder in single-line service to points in Louisiana. It has also experienced difficulties in obtaining pickup service from Johnson.	Morrin. Shipper indicates that Johnson's service has been satisfactory in the several months preceding the hearing.
51. (122) Magnavox Company, Greenville Service Company, a Division of Magnavox Corporation, Atlanta, Ga. Electronic parts and television picture tubes.	From Atlanta shipper has traffic to Houston, Dallas, Fort Worth, and Beaumont, Tex. During April and May of 1956, (its slow season) shipper had a total of 5 shipments weighing collectively 249 pounds to Houston; 11 shipments weighing 356 pounds to Dallas; and 2 shipments weighing 88 pounds to Beaumont.	T.I.M.E. and REA, the former is used only to El Paso, Tex. REA is used to the remainder of the Texas points.	Shipper prefers single-line service because its traffic can be easily damaged and it wants to limit the handling. It is not satisfied with the service rendered by REA.	Baggett. Shipper did not know of any carrier which provide single-line service from Atlanta to the named Texas points. It has made no investigation.
52. (124) Norwich Pharmacal Company, Norwich, N. Y. Drugs.	From shipper's warehouse at Atlanta, Ga. to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Vicksburg, Greenville, Clarksdale, Grenada, and Winona, Miss. Two or three shipments a day move to Jackson with each shipment weighing an average of 350 pounds. It ships about three to five times a week to the remainder of the points with each shipment weighing an average of 350 pounds. About 90 percent of these shipments require protective service from the cold when the temperature is below 25 degrees Fahrenheit.	Denton, Ryder, and Gordons, REA, and Parcel Post handle about 10 percent of shipper's traffic.	Shipper wants protective service in the wintertime. It accordingly is not able to obtain this type of service from the existing carriers. Ryder seldom provides protective service.	Johnson, Bowman, and Jones. Johnson provides protective service to shipper on traffic to Alabama, Florida, and Louisiana. Gordons has provided protective service to the extent shipper uses this carrier.
53. (.26) Scottish Southern, Inc., Memphis, Tenn. Industrial fastening equipment and fasteners.	From its Atlanta, Ga. distribution center shipper has movements to specified points in Mississippi, Louisiana, and Arkansas. It also ships from Dallas, Tex. to Birmingham, Ala. The shipments are LTL and between 50 and 70 shipments move each week, with 10 moving to Arkansas, 30 to Louisiana, and 20 to Mississippi. Occasionally shipper's traffic moves from its smaller facility at Memphis Tenn.	Bowman originates the traffic and interlines at Memphis, Tenn. with Jones to Northern Arkansas, Mercury to Central Arkansas and Red Line to Southern Arkansas. Gordons is used to some Arkansas and Mississippi points. Red Ball interlines at Memphis and delivers to Monroe and Shreveport, La.	Shipper expresses a need for the proposed second-day service to points in the destination territory. It prefers single-line service because essentially it is faster and it facilitates tracing. Customers have complained about transit times and shipper has had difficulty with tracing.	Johnson, Jones, and Bowman. Shipper has not investigated the availability of single-line services from Atlanta to points in the destination territory. It indicates that its customers have the right to decide the routing.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
5e. (127) Crown Candy Corporation, Atlanta, Ga. Candy.	From Atlanta shipper has movements to Lake Charles, La. two or three times a week, to Baton Rouge and Shreveport, La., daily, and to Monroe, La. twice a week. It ships to Greenville, Miss. everyday and to Indianola and Greenwood, Miss. once or twice weekly. With respect to Arkansas points, it ships daily to Little Rock; several times a week to Fort Smith and Fayetteville; once or twice a week to Blytheville, Camden, and Crossett, weekly to Springdale, Osceola, Jonesboro, and Russellville; and two or three times a week to Texarkana and El Dorado. In Oklahoma it ships to Muskogee, Oklahoma City, and Tulsa each two or three times a week, weekly each to McAlester, Miami, Hot Springs, Stilwell, and Spencer. In Missouri it ships weekly each to Joplin, Kennet, Carthage, Neosho, Nevada, and Pineville; twice a week to Springfield; daily to St. Louis; and twice a week to Kansas City. It ships to Garland, Denison, and Orange, Tex. weekly; two or three times a week to Port Arthur and Beaumont; twice a week to Paris; and daily to Dallas, Fort Worth, and Houston, Tex. It has several shipment daily to Chicago, Ill. The average weight of the shipments is [illegible] pounds.	East Texas provides dry ice protection service. Deaton and Gardens have been used to Mississippi, but they have not rendered protective service. Shipper has also used the services of Alterman to Mississippi points and to Baton Rouge; Johnson to Mississippi and Louisiana points; Gardens to Greenville; T.I.M.E. to Missouri points; and Huber & Huber to Chicago.	Shipper needs protective service during the summer months on 40 to 50 percent of its traffic. It wants consistent seven-day service to the furthest points to which it has shipments and next-day service to points nearer Atlanta than El Dorado and Little Rock, Ark. Crown cannot ship on Thursdays because the dry ice protection will not last throughout the weekend. It does not receive any protective service to Oklahoma, Mississippi, Missouri, and Illinois, and to points in Arkansas other than Little Rock. Even to Little Rock the only protective service it has is with dry ice.	Beeman, Harris, Jones, and Johnson. Shipper indicates that Jones is the only applicant proposing protective service. Before the hearing, shipper was not aware that Beeman and Jones could interline to all named Missouri destination points.
5f. (131) Calloway Mills Company, LaGrange, Ga. Flour covering.	From LaGrange shipper has movements to specified points in Louisiana, Mississippi, and Texas. In 1965 it shipped 500,000 pounds to points in Louisiana; 100,000 pounds to points in Mississippi, and 1.2 million pounds to points in Texas. It also has shipments to specified points in Arkansas and Missouri, including Kansas City.	Roadway, Georgia Highway interlining with Mercury, Hart, East Texas, and Thompson, Dixie interlining with Red Ball, D. [illegible] interlining with Ryder, and Georgia Highway in single-line service. T.I.M.E., ICE, Merwin, Alamo Express, and Merchants have delivered its shipments to points in Texas.	Shipper wants 3-day service on LTL movements and 2-day service on TL movements to points in Louisiana, Texas, Arkansas, Mississippi, and Missouri. It maintains a warehouse at Dallas, Tex. but it would terminate the use of this facility if it received the service it desires to Texas points. Shipper introduced two transit time studies. The first covers a few of the shipments delivered between July 30, and October 13, 1965 to points in Texas and to Oklahoma City, Okla. The transit times, which include weekends, range from 9 to 12 days on the 13 shipments listed. The second deals with an unknown percentage of the TL shipments delivered to shipper's Dallas warehouse between January 12 and March 9, 1966. Transit times, including weekends on all but one of the 18 shipments listed, range between 3 and 6 days, except for 11-days on one shipment. Shipper is not satisfied with the transit times.	Johnson, Beeman, and Jones. Shipper will continue to use Georgia Highway to originate LTL traffic which would be interlined with applicants if the applications are granted. Rack space is limited and in order to avoid congestion, shipper wants to limit the originating service to Georgia Highway.
5f. (134) Cole Steel Equipment Company, Inc., Division of Litton Industries, Atlanta, Ga. Furniture.	From Atlanta to points in Mississippi, such as Jackson, Vicksburg, Hattiesburg, Greenwood, Laurel, Biloxi, Columbus, Greenville, Gulfport, Indianola, Meridian, and Clarksdale, and to Houston and Dallas, Tex. Also shipper has traffic moving from its Dallas and Houston facilities to its Atlanta facility. Shipments are made to points in Mississippi about twice a week with each shipment weighing approximately 125 pounds or in other words 250 pounds moves to Mississippi each week. About twice a month shipments weighing 500 pounds move to both Dallas and Houston. About once a month shipments are received at Atlanta from both Dallas and Houston weighing about 500 pounds. After January 1, 1967, shipper expected its traffic to Mississippi to increase by two-thirds because shipper's customers will not be able to obtain furniture from shipper's York, Pa. plant.	Ryder has been used to Jackson, Hattiesburg, Vicksburg, Laurel, and Meridian, Dixie to Jackson and Vicksburg, and Gordon, T.I.M.E., Georgia Highway, interlining with Campbell at Birmingham, Ala., and Deaton.	Shipper has received complaints from its dealers about transit times, Dixie informed shipper that its traffic was not desirable. Shipper has experienced difficulty in obtaining pickup service from Ryder and slow delivery service. It indicates that existing carriers, except Johnson, render slow delivery service.	Beeman, Johnson, and Jones. Shipper has used Johnson to Pascagoula, Miss. and describes its service as satisfactory.
5f. (135) Crawford and Thompson, Inc., Atlanta, Ga. Carpet and padding.	From Atlanta to Jackson, Meridian, Columbus, Greenwood, Greenville, and Pascagoula, Miss., and Shreveport, and Baton Rouge, La. During the first 4 months of 1966 shipper had 93 movements weighing a total of 7,775 pounds. Each shipment weighed between 60 and 400 pounds and the average weight was 181 pounds.	Ryder, Cole, Deaton, and East Texas.	Shipper has lost sales and several customers because of inadequate transportation. It has experienced slow pickup service with Ryder. Second-morning service to the destination territory is desired.	Beeman, Johnson, and Jones. The services of Beeman and Johnson have been utilized and were found to be satisfactory.
5f. (137) Cutler Hammer, Inc. Chamblee, Ga. (Atlanta) Electrical control, switch gear equipment and electrical supplies.	From Atlanta to points in Louisiana, and Mississippi, and to Dallas, Tex. The average size of the shipments is between 50 and 70,000 pounds, and the average tonnage a month is about 400,000 pounds. Only small shipments move into the Texas area with heavier shipments moving to points in Louisiana and Mississippi.	Ryder has been used to Monroe, Jackson, Shreveport, and Baton Rouge, La. East Texas and Deaton are used to Mississippi and Louisiana. Transcon is used to Dallas.	Shipper often requires high volume, open-top, or container trailers. It indicates generally that it has experienced difficulty with Ryder's pickup service. Transcon is not rendering satisfactory delivery service and Deaton was unable to locate a shipment which was being traced.	Beeman, Johnson, Jones, and Strickland. Shipper has used the services of Johnson and Beeman and describes them as satisfactory. Beeman would be used to Louisiana and Mississippi points; Johnson to Louisiana points; and Jones to Arkansas points.

Summary of evidence of supporting shippers—Continued

(Docket 1—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reasons for supporting application	Application supported and remarks
59. (143) Columbus Mills Inc., Columbus, Ga. Carpeting and synthetic woven goods.	From Columbus to points in Louisiana, Texas, and to Memphis, Tenn. During the first 6 months of 1946 shipper had overhead tonnage of 677,340 pounds to Dallas, Tex.; 701,611 pounds to Houston, Tex.; 150,421 pounds to other Texas points; 113,730 pounds to Louisiana points; and 139,345 pounds to Memphis, Tenn. Shipper moves about 30 million pounds a year with better than 10 percent of this total volume going to points in the involved destination territory. The traffic consists of both TL and LTL shipments. Shipper expected to expand its facilities in 1947. It also has movements to Waco, Tyler, Fort Worth, San Antonio, and El Paso, Tex.	To Memphis the services of Georgia Highway interlining with East Texas have been used. Shipper has used other unspecified carriers.	Shipper has difficulty in obtaining equipment during peak periods. Roadway was not able to supply a sufficient number of vehicles in the last months of 1945 and the early part of 1946. Shipper stated that Johnson refused to handle [illegible] shipment but specifics were not given.	Harris.
60. (144) National Aniline Division of Allied Chemical Corporation, Atlanta, Ga. Dyes, chemicals, and detergents	From Atlanta to points in Louisiana and Texas. Shipper has traffic moving daily to points in these two States. The average shipment weighs 900 pounds and it has shipments weighing up to 5,000 pounds. Shipments move to New Orleans, Baton Rouge, Lake Charles, Dodge, Longview, Port Neches, Galveston, Houston, and Texas City, Tex. Shipments weigh between 75 and 200 pounds with the average shipment weighing 125 pounds. Occasionally it will have shipments weighing up to 10,000 pounds. Shipments are made to points throughout Louisiana.	To Louisiana shipper has used Johnson, Ryder, Dixie, and East Texas. To Texas it has used East Texas.	Shipper wants direct single-line service. Time in transit is important because shipper's customers maintain limited inventories. Shipper allows up to 8 days for delivery from Atlanta to points in Louisiana. It has experienced difficulty in obtaining late pickup service from Ryder after this carrier has made its regular pickup.	Harris. The single-line service rendered by East Texas is described as satisfactory. Harris's services have not been utilized.
61. (146) The Bemis Company Atlanta, Ga. Clothing	From Atlanta to Abbeville, Alexandria, Baton Rouge, Bunkie City, Church Point, Crowley, Lafitte, Donaldsville, Jennings, Lafayette, Lake Charles, Monroe, Morgan City, New Iberia, New Orleans, and Shreveport, La., Memphis, Tenn., Little Rock, El Dorado, Camden, Texarkana, and Hot Springs, Ark., and Baytown, Beaumont, Dallas, Fort Worth, Galveston, Houston, and Waco, Tex. Shipments weigh between 75 and 200 pounds with the average shipment weighing 125 pounds. Occasionally it will have shipments weighing up to 10,000 pounds. Shipments are made to points throughout Louisiana.	Johnson, Ryder, Dixie, East Texas, [illegible] interlining with Mercury. Rub Iiams have also been used. Johnson is used direct to New Orleans and in interline service to other points.	Shipper wants consistent 2-day service to New Orleans and Memphis. On one shipment to Mansfield, La. originated by Johnson and delivered by Red Ball, the latter carrier did not render a satisfactory transit time.	Harris and Johnson. Shipper has not investigated the availability of single-line service from Atlanta to the named Texas points. It describes the Mercury-United interline service as reasonably good and indicates that Johnson's service is satisfactory. Shipper was aware that it could originate shipments by Johnson for interline at New Orleans with Harris, Red Ball and Benson.
62. (181) Consolidated Merchandising Corporation, Atlanta, Ga. Sewing machines, sewing machine furniture, and electric irons	From Atlanta to points in Texas, Louisiana, and Arkansas. Shipments to Louisiana are almost on a daily basis. Shipper has between 60 and 100 shipments a month to points in these States and the average weight of each shipment is about 100 pounds. Shipper expects a 25 percent increase annually in its business. It has shipments to points throughout Louisiana (about 45 points) and to points in a portion of Texas ("As far east as Midland and Odessa"). Also shipper has movements to points in Mississippi.	T.I.M.E., East Texas, Johnson, and Transcon. Dixie interlining with Red Ball is used to Shreveport, La.	Shipper prefers single-line service. It has experienced difficulty in obtaining adequate service from the carriers which interline with Johnson at New Orleans, La., and deliver to points beyond. For a 6-month period shipper had difficulty in obtaining pickup service from Ryder usually involving 3 or more days before pick up. After complaining to the president of Ryder, it received satisfactory service	Harris, Johnson, and Red Ball and Benson. Shipper is satisfied with Johnson's service to New Orleans. It indicated that existing service to Texas points is reasonably good. Shipper indicates that it is receiving satisfactory service to Shreveport and New Orleans and that it is interested primarily in obtaining single-line service to the smaller Louisiana points. It is aware that Red Ball could serve these points on an interline basis with other carriers from which it is receiving satisfactory service.
63 (139) The Lovable Brassiere Company, Atlanta, Ga. Ladies undergarments	From Atlanta to points in Louisiana, Texas, Arkansas, Memphis, Tennessee, and St. Louis, Mo. Shipper has movements averaging 500 pounds each almost daily to the Dallas, Fort Worth, Houston, Waco, Beaumont, Corpus Christie, Galveston, Laredo, El Paso, and other Texas points. It ships regularly to New Orleans and Shreveport, La. Also it ships regularly to Memphis, Tenn., and St. Louis, Mo. Between 60,000 and 70,000 pounds move weekly to points in Texas and Louisiana.	To Texas, East Texas, Roadway and when a customer requests Ryder. To Louisiana, Johnson is used, and to St. Louis, Gordons and Ryder are used. To points in Louisiana other than New Orleans REA is used.	Shipper does not like to use Ryder. It has experienced delays in delivery and pickup with this carrier. Time in transit is important because often shipments move in connection with advertised sales. Shipper has experienced pickup difficulties with Gordons. As a result, shipper makes limited its use of this carrier. Shipper wants more than one carrier authorized to serve the named points so that it will be in a position to obtain better service. If the authority sought is granted shipper would terminate its use of REA. It allows 5 or 6 days for delivery to points in Louisiana by REA. East Texas concededly has not rendered satisfactory delivery time to named points in Texas.	Harris, Roadway, and Johnson. Shipper uses the services of Johnson and Roadway. Except for Roadway's service to Texas, shipper describes the services rendered by these two carriers as satisfactory. The service rendered by Johnson to New Orleans is satisfactory but shipper wants "back up" service available. Shipper indicates that five carriers offer single-line service to New Orleans. Even if the applications are granted, shipper would still have to use interline service to some of the named points to which it has traffic moving.
64 (195) Elliot Associates, Atlanta, Ga. Medical instruments	From Atlanta shipper has one LTL shipment a week to Baton Rouge, La. The shipments weigh between 100 and 1,000 pounds each.	Boston and Dixie originate this traffic.	Shipper wants second or third day, single-line service to Baton Rouge. Its loading facility consists of two doors.	Boston. Shipper indicates that it has not used direct single-line service to Baton Rouge because it is not aware of any.

Summary of evidence of supporting shippers—Continued

(Appendix—Continued)

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing service utilized	Reasons for supporting application	Application supported and remarks
66. (1961) Gibraltar Corporation, College Park, Ga. (Atlanta, Ga.) Chemicals and battery acid, both in containers and polyethylene bags.	From Atlanta to Baton Rouge, La. and Dallas, Tex.	Private carriage is used to Baton Rouge, Louisiana, and East Texas are used to Dallas.	Shipper wants to supplement its private carriage to Baton Rouge during the year (except between August and March, in Southern Gulf—the service because of the stringent restrictions to damage with excessive handling.	Seattle. Shipper indicates that the service of Herrin and East Texas is unsatisfactory."
67. (1961) Gulfside Company Atlanta, Ga. Air (Unpressure), paint spray equipment parts, hose and other equipment.	From Atlanta to Jackson and Greenville, Miss., and Birmingham, Ala., with a frequency of between six and eight shipments collectively a week with an average weight of 15- pounds.	Dixie, Dealin, Pyder, and Jackson. Shipper does not use Herrin to Jackson and Greenville at consignee's request or shipments weighing less than 100 pounds.	Shipper wants 2-day service to the aforementioned points. It has received complaints from its customers in Mississippi. A customer located at Jackson complained about transit times.	Interested. Shipper to negotiate with the existing service from Atlanta to Birmingham. It should not request any operating authority which it did not receive a finding to the fact it requested service to traffic to Jackson or Greenville. Shipper has not used Greenville since it was not aware that Pyder could serve Greenville.
68. (1961) Sayer Manufacturing Company, Savannah, Ga. Textile fabrics.	From Columbus it ships 35,000 pounds a week back to Dallas and Fort Worth, Tex. Shipper has an average of 90 LTL shipments a month to the above points. It plans to construct a new mill and expects the volume of traffic to increase by 10 percent in 1962. Shipper also has two or three movements a week to Houston, Tex.	Dixie, Pyder, and Roadway. Beggett interlining with East Texas to Dallas, Fort Worth, and some points beyond. Dixie interlining with Herrin to Bogata. Dixie interlining with Herrin to Dallas and Fort Worth.	Shipper wants direct single-line service to Dallas and Fort Worth. It has experienced difficulty in obtaining equipment from Houston at Columbus and is not satisfied with this carrier's transit time. Shipper points out the use of Pyder-Jackson to the Texas traffic will involve that it go through Atlanta, Ga. Shipper prefers single-line service to the Southwestern points. The existing interline service essentially is two interlining.	Beggett. Subject to protective conditions with service to Dallas and Fort Worth and their surrounding areas. It should not include, or recognize any Dixie-Jackson authority to furnish equipment as a shipment moving to Fort Worth or Dallas.
69. (1961) Kendall Company, Chicago Division, Chicago, Ill. Surgical dressings and related products.	From Shipper's Atlanta, Ga., warehouse to points in Mississippi. Between January and June 1961 it had shipments to Canton, Meridian, Greenville, and Greenwood, Miss., and Gonzales, La. to Dallas and Austin, Tex. Almost all of shipments weigh less than 10,000 pounds.	Dixie, Pyder, East Texas, and Jackson have been used in shipments to Mississippi. East Texas has been used in shipments to Texas.	Shipper wants 2-days for delivery to Mississippi points. Transit time is important since shipper's customers have limited storage facilities. It wants Dixie service to Mississippi. Complaints have been received about late delivery regarding transit times.	Canton, Meridian, and Jones. Shipper indicates that it had no services to Dixie, Pyder, and Jackson to Mississippi.
70. (1961) George E. Failing Company, Atlanta, Ga. Drilling supplies.	Inbound shipper receives at Atlanta between 5 and 10 shipments a month from Enid, Okla., and Dallas, and Houston, Tex. with weights varying between 100 and 600 pounds.	Pyder, East Texas, Waverly, Overnight, Sunset, Roadway, Transcon, Texas, Interstate Express.	Shipper expresses a need for interline service between Atlanta and Houston excluding Dixie and Jackson. Inasmuch as shipper requires the supplies on request and service drilling rigs, time in transit is important. Shipper introduced a transit time study of 25 shipments delivered between 1.95 and 4.16 on shipments moved from Houston, three from Enid, and one from Dallas. Including weekends the average transit time was 6.7 days.	Atlanta. Shipper received satisfactory service from Enid on shipments tendered by interline service to Cleveland.
71. (1961) Ethel Building Products, Atlanta, Ga. Reproduction and copying equipment, sensitized reproduction paper, chemicals, supplies and parts.	From Atlanta to 230 customers located at specified points in Mississippi and Louisiana. About 90,000 pounds a month moves outbound from Atlanta. The shipments weigh between 35 and 5,000 pounds. The monthly average number of outbound shipments to all points is 90+. About 60 shipments move collectively to points in Mississippi and Louisiana each month. Shipper's products are susceptible to damage and require prompt dispatching and expeditious delivery because of their perishable nature. Sensitized paper is date-marked and must be delivered and used promptly.	Pyder, Dixie, and Jackson.	Shipper allows 4 days for delivery to destination points therefrom. It is not satisfied with Pyder's service generally because of pickup problems. Dixie still retains shipper a two-hour pickup, but not more than one pickup after 4:30 p.m. for interline orders. Shipper expresses a need for second-morning service to the points applicants now serve direct and third-morning service to the other destination points.	Brandon, Johnson, and Jones. Johnson testified shipper has orders, i.e., traffic satisfactory... Shipper has available Dixie with Johnson, the services of Pyder, Dixie, Beggett, and Seaton to Bay Springs.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
71. (179) Flex Products, Augusta, Ga. Candy.	From shipper's Atlanta and Augusta, Ga. warehouses to about 7,150 points located in Mississippi, Louisiana, Missouri, Oklahoma, Arkansas, Kansas, and Texas. In 1961, shipper moved 500,000 pounds to Mississippi; 300,000 pounds to Louisiana; between 50,000 and 100,000 pounds to Arkansas; 120,000 pounds to Texas; 50,000 pounds to Missouri; and 80,000 pounds to Oklahoma. Shipper is comprised of four subsidiary companies. The products of all of the subsidiaries are manufactured together.	REA is used from Atlanta and Augusta. Protective service is rendered by Candell interlining with Alterman to some points in Louisiana, Mississippi, and Alabama. Candell, Roadway, Watson-Wilson, Overnight, Johnson, and Bowman are used to originate traffic from Augusta. Candell and Bowman are used to originate most of the traffic at Augusta for interlining at Atlanta.	Shipper requires protective service above 85 degrees Fahrenheit on 80 percent of its products. Time in transit is important because of the perishable nature of the commodity and also because some of the candy is packaged to be sold for certain holidays. REA service is not satisfactory because of time in transit, because items in a shipment are delivered separately, and because of damage. ALA does not render protective service. Shipper is not satisfied with the interline service rendered by Alterman because of transit time and tracing difficulties. During its busy season in the last part of January shipper received about 75 complaints a day regarding delayed deliveries. Shipper has limited dock space.	Bowman, Johnson, and Jones. Jones proposes to serve directly Atlanta but not Augusta. It proposes to render protective service. Shipper is satisfied with the service Candell renders from Augusta to Atlanta. It does not have LTL protective service to Arkansas, Missouri, Oklahoma, and Kansas. During warm weather shipper has used dry ice and insulated containers but with this service it can only ship to direct points in Louisiana and Mississippi and cannot ship after Tuesday since this type of protection lasts only 3 or 4 days. Protective service is required between May and August. Holiday sales (Christmas, Valentine's Day, Easter, and Mother's Day) during which period protective service is not required, represents 80 percent of the sales of two of its four subsidiaries. Shipper's present needs were principally for service to Louisiana and Mississippi. Johnson's service to New Orleans is satisfactory. Shipper commenced using the service of East Texas interlining with Bowman in June 1960, the service involves the use of dry ice in insulated trailers. Shipper had not experienced any difficulty with the several shipments handled in this manner. Shipper was not aware that Bowman could originate traffic at Augusta and interline it at Memphis, Tenn., with Jones. However, Bowman does not render LTL protective service. Jones, Johnson, and Bowman. Shipper is satisfied with the service to New Orleans. It could recall only two specific instances of complaints on the first 6.5 months of 1964 from customers located in Mississippi and Louisiana.
72. (178) Gordon Foods, Atlanta, Ga. Items used in vending machines such as potato chips, cookies, and peanuts.	From Atlanta shipper has movements to Baton Rouge, Lake Charles, Monroe, and Shreveport, La.; and Meridian (one shipment a week); Jackson (three or four shipments a week), Greenville (three shipments a month), Hattiesburg (one shipment every 10 days), Greenwood (once every 2 weeks), Clarksdale (once a week), Indianola (twice a month), Shelby (once a month), Vicksburg, Grenada, and Winona, Miss. (occasionally to these last three points). Shipper's average shipment weighs about 500 pounds. If it received the proposed service, shipper would have movements from Atlanta to specified points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma. It would ship at least once or twice a week to points in these States. Shipper expected its volume of traffic to increase by 25 percent in the year following the hearing.	Johnson, Bowman, Jones, Ryder, and East Texas. Private carriage is used on 75 percent of its traffic. Points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma are served by private carriage with common carriers handling only that traffic which it is not economically feasible for shipper to handle. Shipper handles one half of its own equipment to Memphis, Tenn., where it is interlining for delivery to points in Louisiana and Mississippi. Dixie, Ryder, and Deaton.	Time in transit is important to shipper because a number of the items it ships have a "life" of 30 days from their date of manufacture. Shipper prefers single-line service. It has lost some customers at points in Louisiana located west of New Orleans because of transportation problems beyond New Orleans. Customers here also been lost in Mississippi. Shipper had experienced a 2 week delay in obtaining delivery by a rail carrier to New Iberia, La.	Bowman, Jones, and Johnson. Shipper uses Bowman and Johnson with satisfaction. It did not introduce any bills of lading to show slow pickup service on the part of Ryder. The one Ryder bill shipper showed at the hearing demonstrated that Ryder made a pickup on the proper day. Service to New Orleans is satisfactory. Shipper would have no objection to using the single-line service to Shreveport.
73. (179) Tip Top Products Company, Omaha, Nebr. Women's hair accessories	From shipper's Forest Park, Ga. distribution warehouse (Atlanta, Ga.) traffic moves to Jackson, Miss.; and to Shreveport and Monroe, La. To Jackson it has an average shipment weighing between 800 and 1,000 pounds, to Shreveport it has 4 shipments a month with the average shipment weighing between 400 and 1,000 pounds, and to Monroe it has 1 shipments a month with an average weight the same as those described above. Shipper is interested in service generally to points in Mississippi and Louisiana, with the exception of New Orleans. Representative points are: Columbus, Greenwood, Hattiesburg, Meridian, Vicksburg, Greenville, Indianola, and Yazoo, Miss., and Baton Rouge and Lake Charles, La. One shipment a week moves to each of the representative points.		Shipper receives some complaints about slow transit times with the existing service. One customer in Jackson requested that Ryder not be used and shipper indicates that Ryder does not render a reliable pickup service. With the exception of one of shipper's Jackson customers, consignees have been satisfied with Dixie's service. The one customers complained about transit time. Deaton's service has been satisfactory except for one complaint from a Jackson customer the same one which complained about Ryder's service.	

Summary of evidence of supporting shippers—Continued.

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported & remarks
74. (177) Gale House of Music of Savannah, Ga. Savannah, Ga. Pianos and organs.	Inbound to Savannah shipper has traffic moving from Greenwood, Miss., and Fayetteville, and Conway, Ark. It receives between 10 and 12 LTL shipments a month from Greenwood and Conway and about 5 a month from Fayetteville. Shipper expected an increase in its business of 20 percent in the year after the hearing.	Transcon, Gordons, Harper, Taylor, and Bowman.	Shipper wants direct single-line service by Bowman from Greenwood. It expresses a need for second-day delivery from Greenwood and third-day delivery from Fayetteville and Conway. Time in transit is important because shipper carries an limited inventory. Excessive handling can result in shipper having to return the pianos. Since shipper does not have a loading dock it requires that the dock it requires that the delivering carrier have a hydraulic tailgate on its equipment. A transit time study on six shipments from Greenwood to Savannah was introduced. Gordons originated three shipments and Taylor originated the remaining three. Harper was the delivering carrier in all of the shipments. Transcon was the bridge carrier on the shipments originated by Taylor. Including weekends the transit times were between 4 days and 8 days. Transit time is important. Shipper indicates that unless it is able to obtain better service from Atlanta to Mississippi it will have to set up distribution warehouses at points in Mississippi. It expresses a need for the proposed 2- or 3-day service. Many complaints have been received with respect to existing service.	Bowman and Jones. Shipper has used the services of Bowman as a delivery carrier. Jones would have to interline at Atlanta, Ga. for delivery to Savannah by the connecting carrier.
75. (181) Maryland Baking Company, a division of the Maryland Cup Company, Atlanta, Ga. Cones, paper products and plastics	From Atlanta to points in Mississippi in LTL quantities. Shipments weigh from 500 pounds to 5,000 pounds. The average weight is usually 500 pounds. Representative points to which shipper had traffic moving in 5/66, are Batesville (2 shipments), Clarksdale (3 shipments), Columbus (5 shipments), Greenwood (11 shipments), Hattiesburg (5 shipments), Jackson (15 shipments), Laurel (6 shipments), Meridian (11), and Winona (1). Shipper indicates that it has movements to all points in Mississippi.	Bowman, Johnson, Baggett, Deaton, Gordons, Ryder, and Dixie. Private carriage is used on shipper's cones to Mississippi.		Jones, Johnson, and Bowman. Shipper has used the services of Johnson and Bowman and found them satisfactory.
76. (183) Bostitch-Atlanta Inc., Atlanta, Ga. Industrial fastening equipment and fasteners	From Atlanta to points in Louisiana, Mississippi, and Arkansas. Shipper moves about 10,000 pounds a week to points served by Red Ball in those three destination States. The shipments weigh between 50 and 4,000 pounds. Shipper expects its business to increase 10 percent annually. Between 7/7/65 and 5/26/66 it had shipments from Atlanta to Baton Rouge, Winnsboro, Shreveport, Ponchatoula, Alexandria, Bossiers City, Monroe, Crowley, Lake Charles, Natchitoches, Port Polk, Hammond, Bastrop, Morgan City, Lafayette, Jonesville, and Alnatis, La.; Pine Bluff (Two shipments during this period), and Little Rock (one shipment during this period), Vicksburg, Natchez, and Cedare, Miss.	Ryder, Johnson, Bowman, Dixie, Cole, Deaton, T.I.M.E., MEA, Transcon, East Texas, Georgia Highway, and Red Ball.	Shipper expresses a need for the proposed overnight service to Jackson, Miss., and second-day service to the majority of Louisiana points. It prefers single-line service because it facilitates tracing and avoids the delays inherent in interchanging. A transit time study was introduced covering 131 shipments which moved between 7/7/65 and 5/26/66. This traffic moved to points in Arkansas, Louisiana, Mississippi, and Texas. It was handled in interline service with Dixie and Bowman originating the traffic and Red Ball delivering it. Shipper was not sure whether it represented all of the pertinent traffic interlined with Red Ball during this period. With Dixie the interline occurred at Jackson, Miss. and with Bowman the interline took place at Memphis, Tenn. Including weekends, the majority of the shipments to Baton Rouge were delivered in 5 or less days; to Shreveport, a majority were delivered in 5 or less days; to Monroe and Alexandria one half of the shipments were delivered in 3 or 4 days; to other Mississippi points the majority of shipments were delivered in 5 or 6 days; and to Little Rock, a shipment was delivered in 6 days. The majority of all the shipments listed were delivered in 5 days or less but some were not delivered for up to 9, 10, and 11 days.	[illegible] Ball.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
77. (186) Sanford Corporation a division of Oxford Chemical Corporation, Chamblee (Atlanta) Ga. Cleaning compounds	From Atlanta to Alexandria, Baton Rouge, Shreveport, Monroe, Eunice, Homer, Lake Providence, Windsor, Opelousas, Springhill, Hammond, Natchitoches, and Haynesville, La. The average weight of the shipments is 400 pounds. Between 50,000 and 100,000 pounds moves from shipper's plant each month. Between 7/3/65 and 6/6/66, shipper had about 200 movements to specified points in Louisiana.	Deaton, T.I.M.E., Johnson, Gordons, East Texas, Roadway, and Red Ball. Johnson is used to New Orleans. Deaton originates shipments and interlines with Red Ball at Jackson, Miss. Red Ball is used as a delivering carrier.	Shipper wants faster single-line service to points in Louisiana and Mississippi. It has received complaints on the transit times on shipments to Louisiana. Second- or third-morning service to points in Louisiana would satisfy shipper's needs. It prefers single-line service. Shipper introduced a transit time study of traffic handled to the destination territory mostly in interline service by Red Ball and Deaton or Dixie or Cole. The study covers shipments which moved between 7/3/65 and 6/6/66. Shipper was not certain that all of the pertinent shipments handled by Red Ball were included. Including weekends, a majority of the shipments handled by Deaton or Dixie interlining with Red Ball were delivered in 6 or less days. One half of the shipments handled by Cole interlining with Red Ball were delivered in 6 or less days. Shipper indicated that its study shows that it is receiving an average transit time from the originating carriers of 2.01 days while it was receiving an average transit time of 2.3 days from the delivering carrier, Red Ball.	Red Ball and Bowman. Shipper is satisfied with the service rendered by Red Ball and Bowman. It was not aware of a single-line service from Atlanta to Shreveport
78. (191) David Rothchild Company, Columbus, Ga. Cotton piece goods and synthetic woven fabrics.	From Columbus to points in Louisiana, Arkansas, Texas, and to Memphis, Tenn. Shipper has weekly movements to New Orleans, Shreveport, Baton Rouge, and Monroe, La., Memphis, Tenn., Little Rock, Van Buren, Benton, Fort Smith, El Dorado, and Pine Bluff, Ark. Shipments weigh between 50 and 3,000 pounds. Arkansas and Louisiana points other than those described above are also served by shipper. To New Orleans shipper has between 1 and 3 movements a week weighing a total of 500 pounds; to Shreveport, Monroe, and Baton Route it has 1 shipment a week to each point with the shipments weighing between 50 and 500 pounds; to Memphis it has about 25 shipments a week with each shipment weighing about 500 pounds; to Little Rock and Van Buren, 5 shipments a week to each point with each weighing up to 500 pounds; to Benton 1 shipment a week weighing 500 pounds; to Fort Smith 25 shipments a week each weighing between 500 and 1,500 pounds and to Pine Bluff 1 shipment a week to each of its 2 or 3 customers located there with each shipment weighing between 50 and 1,500 pounds.	Ryder, Dixie, and Roadway. Ryder is used to Shreveport and in interline to points in Arkansas. Dixie is used to New Orleans, Monroe, and Baton Rouge.	Transit time is important to shipper because its customers do not maintain inventories and it has competition. Shipper expresses a need for the proposed overnight service to New Orleans, Baton Rouge, Shreveport, Memphis, and second-morning service to outlying points in Louisiana and to Arkansas. Shipper allows 3 days for delivery to points in the destination territory. It has received complaints about transit time to New Orleans. Shipper was not satisfied with the service rendered by Dixie to Memphis and its replacement, Ryder assertedly is not performing satisfactorily. Dixie's service to New Orleans is also described as unsatisfactory. Shipper refuses to use Johnson because this carrier damaged shipper's facility and assertedly refused to pay the full amount of the claim.	Merrin.
79. (194) Crystal Springs Bloomery, Inc., Chickamauga, Ga. Cotton piece goods.	From Chickamauga to Dallas, Houston, and Marshall, Tex., Little Rock, Ark., Kansas City, and Carthage, Mo., and Columbus, Meridian, Harrisburg, Jackson, and Pass Christian, Miss. Shippers' movements are principally LTL. Between 1/3/66 and 7/1/66 shipper had a total of 181 shipments moving to these points.	Bowman, Service Lines, AEA, Hoover, ET & WNC, Ryder, Baggett, and customers' equipment.	Shipper has had difficulty in obtaining pickup service where it requests it. Shipper allows 6 days for delivery to points in Texas; 3 days are allowed for delivery to Mississippi and it wants overnight service; 3 or 4 days are allowed to Louisiana and it wants second-morning service, 7 to 10 days are allowed to Kansas and Missouri and it wants third-morning service, and 4 days are allowed for Arkansas and it wants overnight service. Shipper stopped using Ryder to Mississippi because 2 months before the hearing Ryder intimated that it did not want to handle this traffic. Roadway is not used as a delivering carrier because about 5 years before the hearing some unnamed originating carrier informed shipper that Roadway would not accept interlined shipments. Shipper has received complaints regarding the existing service. It has experienced problems in obtaining pickup service from ET & WNC.	Bowman. Shipper has satisfactorily used Bowman's services. It is alleged that Bowman can serve Chickamauga under its existing authority to serve points within 10 miles of Chattanooga, Tenn.

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
80. (196) Monarch Citrus Products Company, Doraville, Ga. (Atlanta, Ga.) Preparation ais and beverage syrup in glass containers	From Doraville about 10 LTL shipments a month move to Louisiana points such as Homer, Monroe, Ruston, and Shreveport. Shipper also has one TL movement a month from Doraville to its Dallas Tex. warehouse. It also ships to Little Rock, Pertigrew, and El Dorado, Ark., Kansas City, Pittsburgh, and Wichita, Kans., Clarksdale, Greenville, Indianola, and Shelby, Miss., St. Louis, Mo., McAlister, Oklahoma City and Tulsa, Okla., and Dallas and Grand Prairie, Tex.	To Louisiana points shipper uses East Texas, Gordons, and Cole interlining with Red Ball. On shipments to Dallas shipper stopped using East Texas and began using Roadway.	Transit time is important because shipper's customers do not order until they have an immediate need for its product. To Louisiana points, shipper wants 2-day service. It wants 2-day service to Arkansas points. Single-line service is performed. Shipper is not satisfied with the transit time rendered by East Texas to Louisiana points. It expresses a need for Jones proposed 2-day service to El Dorado so as to obviate the need for serving this point from Dallas. About 50 percent of shipper's traffic moves in glass containers and requires protective service in freezing weather.	Deaton, Red Ball, and Jones
81. (199) Murray Company, Forest Park (Atlanta, Ga.) Cotton gin machinery and parts thereof	Inbound shipments are received at Forest Park from Dallas, Tex. Outbound shipments move from Forest Park to shipper's plant at Dallas. Shipper has about 15 movements a month from Dallas during the cotton harvest and ginning season which lasts for about 45 days between August and October. The shipments weigh between 300 and 2,000 pounds each. It has four shipments a year to Dallas with an average weight of 1,000 pounds. Shipper is primarily interested in the eastbound traffic.	United interlining with Mercury is used on outbound traffic to Dallas. These same carriers handle shipper's inbound traffic. East Texas, Roadway, and Gordons have handled some of shipper's traffic. Georgia Highway sometimes delivers shipments to Atlanta interlining with United.	Transit time is important because shipper's customers are not able to process cotton and therefore lose business while their gins are not operational. Shipper expresses a need for the proposed second morning service from Dallas to Atlanta. Shipper introduced a transit time study of 20 shipments delivered between 7/13/65 and 10/1/65. The shipments moved from Dallas to Atlanta and were handled by Mercury interlining at Birmingham, Ala., with United. The study shows that, including weekends, 10 of the shipments were delivered in 3 or less days (6 were delivered in 3 days). The remaining nine were delivered, again including weekends, in 5 or 6 days.	Strickland. Shipper knows of six carriers which render single-line service between Atlanta and Dallas but it believes that some of them deliver on Saturdays. Shipper is open on Saturdays. Even if the application is granted shipper would, to a degree, divide the traffic among the authorized carriers.
82. (200) Bowman Products Division, Stone Mountain, Ga. Automotive replacement supplies	*From Stone Mountain, which is located 16 miles east of Atlanta, Ga. to Jackson, Greenwood, and Greenville, Miss. Shipper has 80 movements a month weighing between 50 and 200 pounds each, to these three Mississippi points.	Deaton, Gordons, Ryder, Cole, and Dixie. Shipper uses Barnes as a delivery carrier on some shipments to points in Mississippi.	Shipper wants overnight service to the three Mississippi points. It is not satisfied with the existing service. Shipper introduced a transit study of shipments on which it had received complaints. The shipments moved between 2/18/66 and 4/19/66. Four of the shipments moved to Greenwood and four to Jackson. Deaton handled six of the shipments rendering transit times of 4, 5, and 6 days. Gordons handled the two remaining shipments rendering 5- and 6-day service. The delivery dates were obtained from the consignee handling the traffic.	Strickland. Shipper supports Strickland for authority from Atlanta, Ga., and if Stone Mountain is not located in the commercial zone of Atlanta it would not support this application.
83. (202) Bowman Electric Motors Company, Atlanta, Ga. Electric motors	From shipper's Atlanta warehouse between 1/1/66 and 6/23/66 it had 11 shipments weighing a total of 6,094 pounds to Houston, Tex., and 1 shipment weighing 176 pounds to Fort Worth, Tex. From its Houston warehouse shipper had 121 movements weighing a total of 88,041 pounds to points in Georgia, Florida, and North and South Carolina during this same period. The shipments from Houston were interlined at Atlanta. Additionally, during this period 22 shipments weighing a total of 11,818 pounds moved from Houston to points served by Baggett. Shipments weigh between a minimum and 4,000 pounds. Shipper's traffic also moves from its warehouse to distributors located at Birmingham, Dothan, and Gadsden, Ala., Rome and Columbus, Ga., and Chattanooga, Tenn. Only about 10 percent of the traffic between Houston and Atlanta moves between the warehouses.	From Atlanta to Houston shipper has used Ryder, Roadway, Herrin, East Texas, Gordons, and Mercury. United originates traffic to Houston and interlines with Mercury at Birmingham. These same carriers are used in the reverse direction from Houston to Atlanta.	Shipper wants direct single-line service to and from Houston and Fort Worth, Tex. and Atlanta, Ga. Shipper indicates that the interlining service of Mercury and United has not been satisfactory and that Gordons' service is not satisfactory. East Texas is not allowed by shipper for an unspecified reason to serve the Houston warehouse. Ryder's delivery time has not been satisfactory. Shipper received customer complaints regarding delivery time on 50 percent of the aforementioned shipments.	Baggett. Shipper is aware that Gordons has direct single-line service from Fort Worth to Atlanta. It has single-line service between Atlanta and Houston from Roadway, Ryder, Herrin, East Texas, and Transcon. Shipper has used Baggett's service and describes it as satisfactory.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
86. (213) Kraft Foods Division, National Dairy Products Corporation, Garland, Tex. Foodstuffs and animal and poultry food	During the first 6 months of 1966 shipper had movements (1) from Decatur, Ga. (Atlanta), to Baton Rouge, New Orleans, and Lafayette, La., Columbus, Greenville, Greenwood, Gattiesburg, Jackson, Laurel, Pascagoula, Vicksburg, and Indianola, Miss., Memphis, Tenn., Garland, Tex., and Springfield, Mo.; (2) from Lakeland, Fla., to Houston and Garland, Tex., and to Springfield, Mo.; (3) from Garland, Tex. to Birmingham, Mobile, and Montgomery, Ala., Decatur and Douglasville, Ga., and Miami, Fla.; and (4) from Springfield, Charlotte, Goldsboro, and Shelby, N.C., Kissimmee, Jacksonville, and Miami, Fla., and Knoxville and Nashville, Tenn. Shipments move primarily in volume or TL lots in straight or mixed loads either direct to one consignee or to two or more consignees.	From Decatur shipper uses private carriage, Refrigerated Transport Eagle interlining with Colonial, Tompkins Ryder, Railroad, TOFC, and Johnson. From Lakeland shipper uses Refrigerated Transport, Wilson Bros., Commercial, Alterman, and Railroad. From Garland shipper uses Mercury, private carriage, Railroad, Jones, Bowman, Gordons, and Norris. From Springfield shipper uses private carriage, Railroad, Jones, Campbell, Wilson Bros., Holloway, and Western Gillette.	Shipper requires protective service from both heat and cold on most of its products. It indicates that trailers equipped with mechanical refrigeration are required for a portion of every shipment moving from Atlanta. Assertedly existing refrigerated service carriers do not have sufficient equipment to meet shipper's needs from Atlanta. Shipper wants first-morning service to points within 400 miles of its facilities.	Bowman, Norris, and Jones. Ryder has established a special products division with mechanically refrigerated equipment. Shipper was generally satisfied with the interline service of Jones and Bowman from Garland. However, Bowman discontinued using mechanically refrigerated equipment. If its application is granted Bowman would reinstitute refrigerated service.
95. (312) Augusta, Ga.	See Shipper under Missouri heading.			
96. (265) John Sexton & Co., Chicago, Ill. Canned foodstuffs, cleaning compounds, and paper products	Ships from Atlanta warehouse to points in Mississippi. Most traffic moves during months of August, September, and October. Institutional sales.	Dixie, Braswell, G. T.A., Johnson, Deaton, Bowman, Viking, Ryder, West Bros., United Robinson.—All shipments two-line service except to Jackson and Greenville, Miss., where Dixie used direct.	Poor transit times, 5 days delays to one customer when member of a chain organization can jeopardize the entire account. Small hotels and schools maintain small inventories. Problem with tracing.	Bowman, Johnson, and Jones.
97. (306) Continental Can Company, Inc., Atlanta, Ga. Polyethylene film	From shipper's Columbus, Ga. plant to its Beaumont facility it makes weekly shipments weighing between 2,000 pounds and TL lots. Also shipper has movements from Columbus to points in Texas, including Houston, Dallas, and Fort Worth, Tex. and to points in Louisiana. Shipper also has movements from Beaumont to Columbus.	Cole, Dixie, and airlines. Norris—interline service.	Desires second-morning delivery. Wants Norris direct-line service. Transit times range from 2 to 8 days with most shipments in transit 4 to 6 days.	Norris.
98. (323). Cooper, Inc. and its wholly owned subsidiaries. Jockey Nemswear, Kenosha, Wis. Men's wearing apparel	From shipper's Cedartown, Ga. warehouse during the month of August, 1966 shipper had LTL movements to numerous specified points in Texas, Missouri, Oklahoma, Louisiana, Arkansas, Mississippi, and Kansas.	Bowman originates the traffic and interlines at Atlanta, Ga. or Memphis, Tenn. with T.I.M.E., Campbell, Braswell, Transcon, Graves, Ted Ball, East Texas, Western Gillette, and West. REA and UPS also used.	Delays at Atlanta and Memphis gateways; desires third-morning delivery at Dallas for interchange to Los Angeles, Calif. Shipper desires second-day service to Louisiana, Arkansas, and Mississippi, and 4-day service to the Carolinas. Transit time study indicates service to Atlanta takes 1 day but total transit time to points in Kansas takes as much as 12 days, with an average time to Kansas points of 6 to 7 days.	Bowman and Johnson. Although shipper wants to substitute proposed joint-service for existing joint-service, it is believed that shipper will be able to reach more points because of the proposed gateways.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
89. (350) Boyle-Midway, Household Products Division American Home Products Corp., Chamblee, Ga. (Atlanta, Ga.) Aero Wax, dri-brite, aero shave, black flag, Pure Borax, oven cleaner, Diaper Pure, window spray, spray starch, Sani-flush, Wizard, and Woolite.	From Atlanta about 1 million pounds a month moves to the area served by Red Ball (i.e. that portion of Louisiana east of Shreveport, La., all of Mississippi, and all of Arkansas located east of Hot Springs, Ark.). The shipments vary from a minimum to TL.	Johnson is used to Louisiana points; Cole to Mississippi points; East Texas to Arkansas; Ryder to some Arkansas and Louisiana points, and occasionally Deaton; Bowman, G.F.A., Georgia Highway, Baggett, and United are used.	Transit time is important because shipper allowed a two percent discount within 10 days. Consistency of service important because consignees usually maintain limited inventories	Red Ball. Shipper has used Red Ball from its Dallas facility and has received good service.
90. (390) Atlanta, Ga.	See shipper under Colorado heading.			
91. (418) American Cyanamid Co., Wayne, N.J. Chemicals, resins, paint pigments, household products, toilet preparations, and drugs and medicines	From shipper's distribution center at Atlanta, Ga., to points in Mississippi and Louisiana. Monthly shipments of approximately 195,044 pounds to Louisiana; and about 170,390 pounds to Mississippi.	Dixie Highway, Johnson, Ryder, Baggett, East Texas, G.F.A., G.N.E., Gordons, Deaton.	Prefers direct-line service.	Red Ball.
92. (450) American Associated Companies, Inc., Atlanta, Ga. Textile products	From its Atlanta and Hampton, Ga. plants to points in Texas. In September 1966 shipper moved 26,480 pounds to points in Texas from Atlanta and Hampton. Shipper maintains an inventory at warehouses in Dallas and Houston, Tex., and ships to Jackson and Greenville, Miss., El Dorado and Texarkana, Ark., Shreveport, La., and other points. About 30,000 pounds a month are shipped to these points. Between May 1964 and May 1966 shipper had about 300 shipments from North Carolina to Dallas; about 190 shipments from South Carolina; about 200 from Georgia, not including Atlanta from which it had about 550 shipments, 15 from Virginia; about 80 from Alabama; 6 from Tennessee; and 2 from New York.	Perkins is used from Hampton to Atlanta. Gordons, Roadway, Transcon, and East Texas are used to Texas. East Texas is used to Greenville and Arkansas points. Cole and Ryder are used to Jackson. Ryder is also used to Shreveport.	Shipper desires single-line service. It complains about the poor transit time and pickup service at Atlanta and Hampton.	Strickland.
93. (484) Atlanta, Ga.	See shipper under Texas heading.			
94. (480) Atlanta, Ga.	See shipper under Texas heading.			
95. (574) D. H. Jay Industries, Inc. New York, N.Y. Cotton piece goods	From Laredo, Tex., to its facilities at Griffin, Ga., and points in North Carolina and South Carolina, with return shipments to points in Texas. Monthly shipments of approximately 200,000 pounds.	Rail.	Needs faster service.	Floyd L. Beasley, Brown , and Johnson
96. (575) Richmond Screw Anchor Co., Inc., Atlanta, Ga. Steel and wire	From Atlanta, Ga., to Houston, Dallas, and Fort Worth, Tex., and Monroe, La. Monthly shipments of about 2,500 pounds.	Gordons, Watson-Wilson, East Texas.	Dissatisfied with existing service.	Deaton. Shipper pointed out one delay in service by East Texas, and stated that that was the reason it discontinued its use.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
97. (579) Progress Manufacturing Co., Atlanta, Ga. Lighting fixtures	From Atlanta, Ga., to Baton Rouge, and Monroe, La. Approximately 200 pounds moves to Baton Rouge about twice a week, and same amount to Monroe once a week.	Ryder, Baggett, Jack Cole, Johnson.	Joint-line service inadequate. Wants faster transit service.	Deaton.
98. (630) Stevens, Atlanta, Ga. Electric motors and component parts	From Atlanta, Ga., to Shreveport and Baton Rouge, La. Approximately 50,000 pounds moves during summer months.	Johnson and Sais	Prefers single-line service.	Deaton.
99. (631) Miller Falls Company, Atlanta, Ga. Hand and electric tools	From Atlanta, Ga., to Baton Rouge, Shreveport, and Monroe, La., and Dallas, Tex. Three shipments weekly ranging between 100 and 300 pounds.	East Texas, Jack Cole	Prefers single-line service.	Deaton.
100 (632) Guardian Chemical Co., Atlanta, Ga. Concrete surface curing compound	From Atlanta, Ga., to Houston and Dallas, Tex. Truckload shipments weighing about 40,000 pounds move every 6 to 8 weeks.	Mercury, Alabama-Georgia Express.	Prefers single-line service, and second-morning service.	Deaton.
101. (636) Trend Mills, Inc., Rome, Ga. Carpets	From Rome, Ga., to points in Texas. Approximately 2 million pounds moved during a 6 month period in 1966.	Baggett, Georgia Highway, R.C.A., Roadway.	Joint-line service inadequate. Wants third-day service.	Baggett.
102. (671) Tom Huston Peanut Co., Columbus Ga. Peanuts, candies and baking goods	From Columbus, Ga., to Houston, Fort Worth, Dallas, and Beaumont, Tex. Monthly shipments of 24,363 pounds, 45 pounds, 12,691 pounds, and 1,830 pounds to the respective points.	Jack Cole, Dixie, Merrin, Red Ball, and Ryder.	Needs faster service; Problems with delays; and inconsistent service.	Baggett.
103. (672) Lumsus Cotton Gin, Co. Columbus, Ga. Cotton and textile machinery and related parts.	From Columbus, Ga., to Dallas, Tex. About 36,178 pounds moved during a 9-month period in 1966.	Baggett, East Texas, Jack Cole, Merrin, Roadway.	Desires single-line service. Needs faster service.	Baggett
104. (687) Atlanta, Ga.	See shipper under Tex. heading			
105. (725) Atlanta, Ga.	See shipper under Kans. heading			
106. (786) McGee Laboratories Inc., Milledgeville, Ga. Intravenous solutions	From Milledgeville to Little Rock, Ark., Kansas City, Mo., and Dallas and Houston, Tex. During 1966 McGee shipped its commodities to the above points in shipments weighing from 5 to 42,500 pounds. It made 22 shipments to Little Rock in 1966; 36 to Kansas City; 62 to Dallas; and 27 to Houston.	Tamiami, ETHY, Brown, Gordons, Overnight, Mercury, Transcon, T.I.M.E., SWT, CDFG, KEA, WW, UPS, YELL, MOP, T & P, Merrin, Ryder, Roadway, and Bowman.	Too much damage with present service. Wants faster service. Average transit time 6 days, including weekends. Allows 1 week lead time to Little Rock. Wants 2-day service to Little Rock. Allows about 10 days lead time to Kansas City, and Dallas and wants 2- or 3-day service. Some products require refrigeration.	Bowman. Of 22 Arkansas-bound shipments 13 were damaged or short. Of 36 to Kansas City, 13 were damaged or short. Of 62 to Dallas 22 were short or damaged. Of 27 to Houston 17 were damaged or short.
107. (865) Marks Handkerchief Manufacturing Company, Augusta, Ga. Mens' handkerchiefs	From Augusta, to points in Arkansas, Mississippi, Louisiana, Texas, and Missouri. During a 5 month period shipper had 23 shipments to points in the above States. Average weight was 120 pounds (LTL). Shipper states that this represents about 50 percent of its shipments during this period.	Bowman, Brown, Yellow, and Roadway.	Wants faster service so as to meet competition.	[illegible] never used the services of Johnson. Shipper has services of many carriers and it provides no details of late or delayed shipments.
108. (873) Southern Press and Filter Media Company, Augusta, Ga. Filters.	From Augusta to Houston, Beaumont, Baytown, and Dallas, Tex.; Baton Rouge, La., Pine Bluff and West Memphis Ark., and Jackson, Miss., from 12/5/66 to 1/30/67 shipper had 67 shipments to above points. Average weight was about 150 pounds.	Brown, Bowman, Roadway, P.P. REA, Yellow, Watson, Ryder.	Wants faster single-line service to eliminate tracing problems. Wants 3-day service to Texas, Arkansas, and Kansas City, and 2-day service to points in Louisiana and Mississippi.	Bowman, Johnson, Watson-Wilson gives good service to Kansas City. Several carriers can interline at Atlanta.
109. (884) Atlanta, College Park, and Tucker, Ga.	See shipper under Alabama heading.			
110. (888) Colgate-Palmolive Company, Inc., New York, N.Y. Cleaning compounds.	From shipper's La Grange, Ga. facility to points in Mississippi and Louisiana. Will ship about 10,000,000 pounds a year from new plant expected to open in 1968.	None	Wants overnight service.	Bowman. Roadway can serve two or three points in single-line service. Georgia Highway can also serve several points. Several other carriers can perform single-line service and they have been untried because plant is not yet complete.

Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
111 (901) Dyno Products Company, Inc., Augusta, Ga. Embossing tools and tape.	From Augusta to points in Louisiana, Mississippi, Missouri, Arkansas, and Texas. During a 3 and one half month period shipper had almost 100 shipments to points in the involved territory. All shipments are LTL weighing about 100 pounds.	Bowman, Johnson, Roadway, Watson, Muckabee, Harris, and Red Ball.	Wants faster service. Allows 4 to 5 days lead time to Texas, Louisiana, and Mississippi. Wants overnight service to Mississippi and Louisiana and 2-day service to Texas.	Bowman and Johnson. There are several interline connections that shipper has not tried. Shipper has no specific complaints other than poor transit time by Roadway.
112 (914) Atlanta, Ga.	See shipper under Maryland heading.			
113 (920) The Arrow Company, Troy, N. Y. Clothing.	From shipper's Atlanta, Ga. facility to points in Mississippi, Arkansas, Louisiana, and Texas. From Lake Village, Ark., to Atlanta, Ga. (receives 600 pounds a week--this is about two shipments). Shipper moved from Atlanta during May 1966, 1,831 shipments by motor carrier. Average shipment weighs 300 pounds.	Red Ball, Ryder, Roadway, ETNC, Cole, REA, and C.F.A.	Wants faster service. Dissatisfied with existing joint-line service.	Red Ball. Shipper has no specific complaints. Shipper has available to it single-line service to many points involved herein.
114 (924) Claxton Bakery Inc., Claxton, Ga. Fruitcakes.	From Clayton, Ga., to Laurel, and Jackson, Miss., Kansas City, Mo., and points in Louisiana, Texas, and Arkansas. From 10/10/66 to 11/30/66 (heavy season) 48 shipments to the involved territory weight ranged from minimum to TL (40,000 pounds). Average 2,000 pounds.	Georgia Highway, Akers, Bowman, Transcon, T.I.M.E., Hoover, Atlas, Tamiami, Strickland, Ryder, Gordons, Watson.	Wants single-line service. Too many problems with joint-line service. Slow deliveries.	Bowman. No specific proof of delayed deliveries or poor service. Shipper does not always choose the carrier.
		KANSAS		
1. (29) Russell Stover Candies, Inc., [illegible] Springs, Kans. Candies.	From Kansas City and Loring, Kans. to Birmingham, Ala. and Atlanta, Ga. At least one LTL shipment moves each week. During the period of a year 2 million pounds have moved from Loring to shipper's distribution warehouse at Atlanta. This is both TL and LTL traffic. The LTL shipments are between 500 and 4,000 pounds. Annually, 40,000 pounds moves from Loring to Birmingham.	Campbell, Watson-Wilson and private carriers.	Shipper must either use private carriage to move its traffic from Loring (located 30 miles from Kansas City), or use a local carrier. It wants second-morning delivery from Loring to Atlanta, and from its shipping station in Kansas City to Atlanta. Jones holds authority to serve Loring, and if its application is granted it would be able to serve Atlanta in single-line service. Bowman would be used from Kansas City.	Bowman and Jones. Shipper requires a protective service when the temperature is above 90 degrees Fahrenheit. Watson-Wilson's services are described as good and bad. Shipper has not always been able to secure equipment from this carrier. Campbell has been used mostly on LTL movements.
2. (452) Sears Stores.	See shipper under Texas heading.			
3. (695) Topeka Motor Freight, Topeka, Kans. General commodities.	From Kansas City, Kans., to Atlanta, Ga. and Birmingham, Ala. Five shipments weighing about 2,000 pounds a day.	T.I.M.E., Gordons, Transcon, Watson-Wilson, Campbell.	Needs faster service. Wants 2-day service.	Jones.
4. (700) National Packing Co., Kansas City, Kans. Meats.	From Kansas City to Atlanta, Ga. and Birmingham, Ala. Monthly shipments to Atlana ranging between 35,000 pounds and 40,000 pounds. TL and LTL shipments.	Bilyeu, Refrigerated, Hirschbach, Jones, Bowman.	Difficulty in obtaining refrigerated equipment.	Jones, Red Ball. Shipper states that it has had no real problems with the joint line service of Jones and Bowman. Refrigerated trailers equipped with meat rails are required.
5. (701) Ebling Case Co., Kansas City, Kans. Tile.	From Florence, Ala. to Kansas City. Between four and five TL monthly.	ETNC, Jones.	Needs faster service because of lack of storage space.	Jones. Specific volume not given.
6. (702) Midwest Cold Storage & Ice Corp. Kansas City, Kans. Prepared frozen foods.	From Kansas City to Atlanta, Ga., and Birmingham, Ala., and return. About 800,000 pounds moves annually.	Campbell.	Only LTL service available. Requires perishables to be packed in dry ice which is unsatisfactory to shipper. Needs a scheduled serv[illegible]	Jones. Protestants have not shown that they are interested in the traffic.

Summary of evidence of supporting shippers—Continued

KANSAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
7. (705) C.F. Bender Co., Kansas City, Kans. Castings.	From Kansas City to Atlanta, Ga. Monthly shipments weigh about 5,000 pounds.	Jones, Bowman, Watson-Wilson, T.I.M.E., Transcon, Gordons.	Joint-line service inadequate. Wants 2-day single-line service.	Bowman, Jones.
8. (712) Sunflower Packing Company, Wichita, Kans. Beef and beef byproducts.	Wichita to Atlanta, Ga. Two to three TL shipments a week. Each TL weighs about 35,000 pounds.	Bilyeu from Wichita interchanging with other carriers to Atlanta, Ga.	Wants direct single-line service to Atlanta.	Jones. Never tried service of Frozen Food Express which can serve Atlanta through Emporia, Kans. Gateway. Refrigerated equipment is required.
9. (716) Brockett Stripping Machine Company, Inc., Topeka, Kans. Binding machinery.	From Topeka to Tennessee (25 shipments a month), Birmingham, Ala. (10 shipments a month), Georgia (13 shipments a month), and Florida (8 shipments a month). Shipper also anticipates irregular shipments to North and South Carolina. A shipment can weigh up to 4,500 pounds.	Yellow Transit, Watson-Wilson interlining with other unnamed carriers.	Joint-line service too slow. Damage to machines more likely in joint-line service. Wants 3-day service to Northern Florida.	Bowman. Yellow Transit offers single-line service to Atlanta, Ga. About eight shipments a month move to Atlanta.
10. (717) Henry Manufacturing Company, Inc., Topeka, Kans. Excavating and earth moving machinery and parts thereof.	From Topeka to points in the Southeast. Shipments move from Topeka to North Carolina, South Carolina, Georgia, Richmond, Va., Mobile, Ala., and Tennessee. Shipper transports 150,000 to 200,000 pounds a year to the Southeast. Most shipments are LTL and weigh between 200 and 1,000 pounds.	Capitol, Yellow Transit, Roadway, Campbell.	Single-line service would cause less damage to machines. Present service too slow.	Bowman.
11. (724) Metal-Fab, Inc., Wichita, Kans. Pipe and ducts.	From Wichita to Atlanta, Ga., and through Atlanta to points in Florida. During 1966, 110,000 pounds moved to Atlanta and 40,000 pounds moved to Florida. Truckload quantities weigh 12,000 pounds. Shipper estimates that it will have two TL truckloads a month to Atlanta.	Transcon, Yellow Transit, and Watson-Wilson.	Desires faster service to Atlanta. Transcon's equipment arrives at Wichita between 2:30 and 3:00 p.m. and shipper's employees must be paid overtime to load the trailer. Shipper wants morning pick ups. Wants 2-day service to Atlanta.	Jones. Transcon can perform single-line service to Atlanta.
12. (725) Russell Stover Candies, Inc., Bonner Springs, Kans. Chocolate candies.	From Kansas City and Loring, Kans. to Atlanta, Ga., Greenville, Miss., and from shipper's Atlanta warehouse to Birmingham, Ala. In 1966, 2,450,000 pounds were shipped to Atlanta; more than one-half was transported by private carriage. From Kansas to Greenville it transports 500 pounds a week, and from Atlanta to Birmingham it ships at least 1,000 pounds a week.	From Kansas City it uses Campbell, Jones, and Watson-Wilson. From Atlanta it uses Johnson, United, Baggett, Dixie, Bowman and G.F.A.	Wants refrigerated equipment in single-line service so as to avoid possible damage to its commodities when transferred to joint-line carriers.	Red Ball. Packs chocolates in cartons with dry ice. Requires temperature controlled vehicles. This shipper also supports Bowman and Jones. See 1. (29) under Kansas heading.
13. (728) Rock Refrigeration Inc., Kansas City, Kans. Refrigerators, freezers and hot food warmers	Kansas City to points in Florida. Shipper moves about 500,000 pounds a year.	Teedebusch and Roadway interlining with Ryder and Central. Also uses two Freight Forwarders, viz., Acme Fast Freight and Universal Carloading.	Present service too slow. Single-line service would permit less handling of the commodities.	Bowman. Only made six deliveries to Florida in the last 6 months.
14. (836) Phillips Petroleum Company, Bartlesville, Okla. Lubricating oils and greases.	From shipper's plant at Kansas City, Kans. to points in Florida, Georgia, North Carolina and South Carolina. Shipper moved almost 12.8 million pounds during 1965 to the above points.	Watson-Wilson, Roadway, T.I.M.E. and Transcon (direct to Atlanta), Georgia Highway and Central.	Wants single-line service to those points which are now served by joint-line operations. Single-line service would avoid tracing problems.	Bowman. Shipper has no specific complaints with existing service. It prefers single-line service.
15. (837) Wilson & Co., Inc., Kansas City, Kans. Frozen meats, hanging meats, and meat products.	From Kansas City, Kans. to the gateway of Atlanta, Ga. From 8/19/66 to 12/31/66, shipper moved 49 TL by motor carrier to Atlanta. Average weight was 32,000 to 35,000 pounds.	Refrigerated Transport and Hirschbach, Jones.	Wants fast direct-line service because its products are perishable. Most regular-route carriers do not have appropriate equipment. Wants proposed second-morning regular service to Atlanta.	Jones. Gordons has very little refrigerated equipment available. Witness may not be responsible for all routings. Requires refrigerated equipment.
		KENTUCKY		
1. (928)	See shipper under North Carolina heading.			

Summary of evidence of supporting shippers—continued

LOUISIANA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (79) Baton Rouge, La.	See shipper under Mississippi heading			
2. (79) L. S. Price Merchantile Co. Shreveport, La. Dry goods	Inbound to Shreveport from Adamsville, Thomaston, and Columbus, Ga., Walhalla, S.C., and Spray, N.C. The average weight of the shipments is between 200 and 2,160 pounds.	From Thomaston shipper has used Georgia Highway interlining with Herr, Red Ball or Herrin, and Perkins interlining with Dixie and Red Ball. From Walhalla it uses a three-line service with Duncan interlining with ETSWNC, Red Ball, and STS. From Adamsville shipper uses Georgia Highway interlining with Red Ball or West and Herrin.	Shipper wants a better, faster, and more consistent service that it has so that it would be better able to serve its customers. Shipments would be originated by connecting carriers and interlined with Strickland at Atlanta. Shipper expects 3-day service from the origin points to Shreveport, except on shipments from Spray which it feels should take 4 days.	Strickland
3. (109) Ethyl Corporation Baton Rouge, La. Chemicals inbound Plastic resins and chemicals outbound	Shipper received at its Baton Rouge plant during the first 6 months of 1966 725,000 pounds chemicals from its facility at Orangeburg, S.C. Its facilities at Houston, Tex. received approximately 560,000 pounds of chemicals from its Orangeburg facility during this same period. Outbound from Baton Rouge shipper has movements to Birmingham, Ala., Fort Pierce, Fla. and Stone Mountain, Ga.	Shipments inbound to Baton Rouge from Orange are handled in a three-line haul involving Huckabee, Deaton and Poplarville, with interchanges at Atlanta, Ga. and Poplarville, Miss. Inbound traffic to Houston has been handled in a three-line haul involving Huckabee, Deaton, and Herrin with interchanges occurring at Atlanta and New Orleans, La. Outbound to Birmingham from Baton Rouge Poplarville interlining with Deaton are used in TL shipments and Ryder is used on LTL shipments. Ryder was used to Fort Pierce but shipper was forced to commence utilizing the two-line service of Herrin and Central to this point. Also, Ryder is used from Baton Rouge to Stone Mountain.	Time in transit is important on inbound shipments because often the continuation of its manufacturing process depends on the timely receipt of the commodities. On LTL traffic from Baton Rouge to Birmingham shipper allows 3 or 4 days. It indicates that it is not receiving consistent service on this traffic. From Baton Rouge to Stone Mountain shipper allows 4 days. Shipper wishes to substitute a two-line haul for the existing three-line haul on inbound traffic to Houston and Baton Rouge.	Herrin and Deaton. Shipper is satisfied with the existing service from Baton Rouge to Fort Pierce. It is aware that although it uses a three-line service from Orangeburg to Baton Rouge it has available the services of a number of carriers which can render two-line service. Shipper also supports Sommer and Johnson. See #3 (599) under Louisiana heading.
4. (109) American Metal, Inc. New Orleans, La. Steel doors and frames	From New Orleans to points in Georgia such as Atlanta and to points in Alabama such as Birmingham, Mobile, and Montgomery. Shipper has between 12 and 15 movements daily with an average weight of between 5,000 and 6,000 pounds. Shipments to Georgia amount to approximately 17 percent of the total traffic and to Alabama about 15 percent. Shipper expected to increase its output by 15 percent in the year following the filing of its statement.	Herrin, Red Ball, Johnson, Ryder, Deaton.	Dixie will not handle shipments untrated traffic because of damage claims. It continues to handle other of shipper's traffic. Shipper prefers single-line service because it lessens the risk of damage. Time in transit is important because deliveries are often scheduled when a job site is involved.	Herrin. Shipper has satisfactorily used Herrin's service. It indicated that except for a few instances it had no criticism of the existing carriers.
5. (190) Frigidaire Sales Corporation New Orleans, La. Frigidaire appliances	From New Orleans to points in Florida shipper has 15 shipments a day, with an average weight of 900 pounds. Shipper has dealers at Pensacola, De Funiak, Fort Walton, Crestview, and Panama City, Fla. It has about 100 shipments a month from New Orleans to Pensacola. About 90 percent of shipper's Florida traffic moves to Pensacola and the remainder moves to outlying areas.	West and Johnson, to Chipley, Fort Walton, and Panama City shipper uses the three-line service of West, Cooper, and HRSW.	Time in transit is important because of the competitive nature of shipper's business. Shipper expresses a need for the proposed overnight service from New Orleans to Pensacola. Johnson accordingly requested shipper to tender its Pensacola traffic to another carrier because Johnson had more freight than it could handle and the traffic was not profitable without a backhaul. Shipper is using Johnson on this traffic but the pickup service is slow. A dealer of shipper's has indicated that it will sell another line of appliances if transit time to Pensacola is not improved. Shipper indicated that Central will not make pickups.	Herrin. Herrin does not propose to serve Chipley, Fort Walton and Panama City. Shipper denied that following a meeting between representatives of Johnson and shipper in April 1966 the former commenced rendering daily pickup service to shipper's plant. It did indicate that in the 60 days preceding the hearing it was possible that Johnson handled a total of 50,000 pounds from shipper's plant to Pensacola.

Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (301) Bastrop and Springhill, La.	See shipper under South Carolina heading.			
7. (240) 23 stores including those located at Shreveport and Natchitoches City, La.	See shipper under Texas heading.			
8. (256) Morgan & Lindsay Co., Inc., Monroe, La. Warehouse operation from Chain Store general merchandise	Shipments from Monroe to stores located in Alabama, Arkansas, Louisiana, Mississippi, and Texas. Shipper received 16,000,000 pounds at Monroe during 1965—much from southeast.	Ryder direct from some points in Carolinas. Bowman joint-line service with interchange at Memphis, Tenn. Akers, Strickland, Roadway, Thurston, Hart, Lee Way, McLean, T.I.M.E. and Cole.	Dissatisfied with Ryder service because of delays and difficulties in collecting claims. Shipper introduced a transit time study which shows that on inbound traffic to Monroe, excluding weekends, it is receiving between 4 and 5-day service from Pennsylvania, between 5- and 6-day service from North and South Carolina, between 4- and 5-day service from the Middle Atlantic States, 4-day service from Georgia, and over 7-day service on one-half of the listed traffic from New England.	Johnson and Bowman support as to inbound shipments.
9. (316) Selber Brothers, Shreveport, La. Clothing	Inbound at Shreveport shipper receives 50 shipments a month with an average size of 100 pounds a shipment from points in North and South Carolina, Mississippi, Alabama, Florida, and from Atlanta, Ga.	Ryder is used on 75 percent of the involved traffic with the remainder being handled by Herrin and East Texas.	Wants second-morning delivery [illegible] also wants deliveries on Saturdays.	Strickland.
10. (332) Canteen Corporation Chicago, Ill. Vending machines.	Inbound at its Baton Rouge, La. Houston and Dallas, Tex. plants shipper receives movements from Whippany, N.J. Shipments also move from South Kearney and Dover, N.J. to Dallas. Mostly LTL.	To Baton Rouge shipper uses Super Service, Johnson, Strickland, T.I.M.E., and Navajo, to Dallas Kramer interlining with Transcom, Yellow Forwarding, T.I.M.E., Universal Carloading, and Strickland, are used, and to Houston Kramer interlining with Transcom, Yellow, Consolidated and Roadway are used.	Dissatisfied with having to leave a 14-day lead time for shipments from Whippany, N.J. to Dallas. Transit study on shipments to Dallas indicates 5 to 13-day service from Whippany except for Yellow Forwarding Co., service time ranges from 7 to 15 days.	Bowman and Johnson.
11. (337) Paloroma Products Ruston, La. Outbound: picnic jugs, ice chests, charcoal stoves, folding chairs, and Christmas tree decorations. Inbound: plastic cup and cups, plastic spigots, and extrusion aluminum and steel and cake envelopes	Inbound shipper receives at Ruston about two shipments a month from Opelika, Ala. during its busy season. The shipments weigh an average of about 5,000 pounds. Outbound from Ruston shipper has about 250 movements a month, with each shipment weighing approximately 400 pounds, to Columbus, Savannah, Atlanta, Forest Park, Macon, and Doraville, Ga. and Birmingham, Ala. Inbound shipments also move from Birmingham, Ala., and Helena, Ga.	Outbound Ryder, East Texas, Braswell, and Red Ball. Inbound East Texas or Red Ball interlining with origin carriers to provide service from Opelika to Ruston. (Interchange at Birmingham) Ryder and East Texas from Birmingham to Ruston. Ryder, Johnson, Dixie, and East Texas from Atlanta to Ruston.	Time in transit important on inbound shipments in order to maintain production schedules and on outbound shipments to meet customer demands especially during peak summer season. Shipper desires third-morning delivery to Birmingham and Atlanta, and fourth-morning delivery to smaller points around Birmingham and Atlanta.	Herrin and Strickland will use applicants to Shreveport, La. and a local carrier (Cavanaugh Motor Freight) between Shreveport and Ruston.
12. (338) Mid Continent Steel Casting Corp. Shreveport, La. Steel castings	From Shreveport to Cedartown, Savannah, and Cordele, Ga.; Montgomery, Ala.; and Yanboro and Maysville, N.C. Shipper has between 10 and 15 movements a month weighing between 2,000 and 5,000 pounds each.	Ryder.	Desires second-morning service to Atlanta. Currently shipper operates on a lead time of up to 10 days for shipments to Atlanta and Birmingham and up to 2 weeks for shipments to the Carolinas.	Strickland.

Summary of evidence of supporting shippers not heard

Shipper, location and commodity	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] Supply, Inc. Bossier City, La. Fiberglass reinforced plastic structural members, and castite parts	[illegible] Bossier City fiberglass concrete accessories shipper has daily movements to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Tennessee and the entire eastern region. The shipments weigh from a minimum to TL. Peak season from January to June or July (8-10 loads a day during peak season) Transition to "[illegible] year	East Texas, Ryder and Red Ba[illegible] with passage at Texarkana, Texas [illegible]	[illegible] shortages due to [illegible] deliveries from Shreveport to Atlanta.	[illegible] and [illegible]
[illegible] The Brewster Company, Shreveport, La. Inboard-outboard engines, equipment, electrical parts and equipment, and [illegible] castings, [illegible] inboard-outboard motors, [illegible] transmissions, conveyor tubing, [illegible] steel, pipe, fuster wire, [illegible] telephone parts fittings, etc. (169)	[illegible] to Shreveport about 25 shipments a month weighing an average of 30[illegible] pounds are received from the East, East Coast, South, and Southeast. Outbound shipper has about 90 shipments a month with an average weight of 200 pounds, to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Virginia, West Virginia, and Kentucky.	Ryder, Red [illegible] East Texas and Acme	[illegible] service [illegible] Atlanta and overnight service from Birmingham [illegible] transit time together with [illegible] outbound shipments of parts which [illegible] are shipped in [illegible] to the [illegible] Inbound shipments from Chattanooga, Tenn. are at [illegible] 5 days [illegible] Atlanta via shipment from Atlanta via [illegible] Ry took 4 days	[illegible] Bo[illegible]
18. (383) Dresser, Inc. Alpine City, Texas	Pick up freight destined from and to points in the southeast through interchange points at Monroe and Shreveport, La. Terminal handles about 300 shipments a month average weight 500 pounds	Ryder, ETW	[illegible] service [illegible] not rates on paper products in South [illegible]	Strickland Shippers [illegible] currently [illegible] [illegible] used a motor [illegible] lack of interlocking carriers
	From Alpine City to points on the Gulf and Atlantic Ports. Outbound volume is 500,000 pounds monthly. From middle Atlantic and the New England States to Alpine City. Receives 800,000 pounds monthly. Other outbound shipments all made to Birmingham, Montgomery, and Mobile, Ala.; Atlanta, Columbus and Rome, Ga., and to Jackson, Miss. About 100,000 pounds moves to these areas each month	Red Ba[illegible], Braswell, Herrin	Wants direct single line service for faster and more reliable deliveries	Herrin Shipper has never tried several interline combinations
19. (382) Reyco and Abbeville, La.	See shipper under Texas heading.			
20. (383) EBO, Inc. Baton Rouge, La. Building and hardware supplies	From points in Alabama, Georgia, New York, Ohio, and South Carolina, to Baton Rouge. Monthly shipments range between 100 and 2,000 pounds.	Gordons, Red Ball, Jones, Cole, Northern Complete, REX, Ryder, McLemba, ATT, Complete[illegible] Braswell, Holly.	Wants faster service. First-day service desired from Atlanta, Ga. Average transit time two to 6 days, including weekends	Herrin will handle "through time does not include [illegible] traffic, during period.
21. (383) Carpet Sales Co. Baton Rouge, La. Carpets.	From Carlisle, Pa. and Rome and Dalton, Ga., to Baton Rouge. Monthly shipments range between 100 and 2,000 pounds.	Sole, Ryder, Braswell, Calvary, Cotton C.	Want better than 4-day service. Average transit time is [illegible] days from Pennsylvania and 5 days from Georgia, including weekends.	Herrin [illegible] time study for all shipments during period covered.
22. (383) Coco Chemical Co. Kansas City, Mo. Insecticide.	From shipper's plant at Baton Rouge, La., to points in Maryland, Pennsylvania, North Carolina, South Carolina, Tennessee, Alabama, and Georgia. About 45 million pounds moves annually. TL and LTL shipments.	Ryder, Red Ba[illegible], Herrin, Gordons, Strickland, Copperstate, Braswell.	[illegible]	[illegible]

Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
23. (548) Fletcher Equipment Company Baton Rouge, La Contractors equipment	Inbound to Baton Rouge shipments are received from Atlanta, Ga., Birmingham, Ala. and points in New York, Pennsylvania, New Jersey, and Virginia, among other States. Shipper receives between two and four shipments each day and the shipments weigh between 100 and 30,000 pounds with the average weight being about 800 pounds	Red Ball, Ryder, Arow, Gordons, Merrin, Brasswell, Sale, Str. Wilson, Roadway, Lee, T.I.M.E., and Johnson originate Atlanta movements, and Campbell and Red Ball deliver them. Ryder renders single-line service from Atlanta to Baton Rouge. New Jersey, Pennsylvania, and Virginia Shipments originated by Ryder, Roadway, Strickland, T.I.M.E., Johnson, and Wilson and are delivered by Brasswell, Red Ball, Arrow, Gordons, Merrin, and SAIA	Shipper indicates that it has been forced to maintain a larger inventory than it would like to because of poor transportation service transit time and consistency of transit time are important to shipper. It introduced two transit time studies. The first lists 12 shipments from Atlanta, delivered between April and September 1966 and August 1965. Transit times were not given for two listed shipments. The five shipments for which transit times, including in some instances weekends, of 3, 4, 5, 3, and 6 days, respectively. One shipment from Ohio, including two weekends and a holiday had a transit time of 13 days, three shipments from New Jersey had transit times, including weekends in six instances of 10 (include 2 weekends), 8, and 8 days respectively. One shipment from Virginia had a transit time, including two weekends, of 10 days. The second study listed about 41 shipments from points in Ohio, New Jersey, Georgia, New York, Delaware, and Pennsylvania. Shipper was not satisfied with the transit times.	Merrin. Shipper is satisfied with Merrin's service as a delivering carrier. It wants to be applicant from the Memphis item garner.
24. (552) Shreveport and stores at points in Louisiana	See shipper under Texas heading			
25. (566) Olin Mathieson Chemical Corporation (Intracoastal Division) West Monroe, La Paper products	From points on the eastern seaboard to West Monroe. From May to August 1966 shipper received 78 shipments from above points. Size, weight was about 900,000 pounds. From West Monroe to points on the eastern seaboard. From August to September shipper shipped in excess of 90 shipments to above points average weight 2,000 pounds	Red Ball, Ryder, Brasswell, Arrow, Strickland, Avero, Watkins, Wilson, Roadway	Wants faster service. Average transit time is 10 days, including weekends. Wants next-way delivery to Atlanta and 2-day service to Carolinas	Johnson, Bowman, Red Ball. Shipper uses rail and private carriage to transport most of the involved traffic
26. (509) Lake Charles Harbor and Terminal District Lake Charles, La	None given	None given	The growth and expansion of the Lake Charles Harbor and Terminal District, and its consequential need for improved motor carrier services.	Baggett, Bowman Beaton, Floyd & Beasley, Red Ball, Strickland. Lake Charles Harbor and Terminal District is a political subdivision of the State of Louisiana. Merrin. Shipper's outbound traffic requires special trailers because of its weight. Transit time study includes all traffic for period covered
27. (540) Pelerin Minor Corp. Kenner, La. Iron castings electrical motors laundry machinery and parts.	From Columbus, and Atlanta, Ga., St. Petersburg, Fla., Detroit, Mich., Vernon, N.Y., Glenbrook, Conn., and Spartanburg, S.C., to Kenner. From Kenner, La., to Birmingham, Montgomery, and Mobile, Ala., Atlanta, and Columbus, Ga. Inbound shipments range between 60 and 30,000 pounds daily outbound shipments range between 50# and 15,000 pounds.	Lolo, Ryder, West Bros.	Wants faster service. Average transit time from Columbus is 4 days, from Atlanta 4.9 days, and from Detroit 6 days, including weekends.	

Summary of evidence of supporting shippers—Continued

LOUISIANA—continued

Shipper, location and commodities	Origins, destinations, volume, type [illegible]	Existing services utilized	Reason for supporting [illegible]	Application supported and remarks
26 (542) Hull Manufacturing Corp. Lafayette, La. Walk in refrigerators, materials and supplies necessary to the erection of installation thereof	From Pennsauken, N.J., Atlanta, Ga., and Birmingham, Ala., to points in Louisiana. Approximately 15,000 pounds a month	Ryder	Needs faster service	Red Ball. It appears that Ryder, in conjunction with Harris Express can serve shipper in single-line service
27 (547) American Metal, Inc. New Orleans, La. Metal doors and door frames	From New Orleans to points in Alabama, and Tennessee. Shipments range between 10 and 12,731 pounds	Viking, Ryder, Campbell, Dixie, Deaton, Strickland, RLA	Desires faster service and single line service	Bowman. Shipper could not give the name of the points within the de- [illegible] it already has single-line service.
28 (555) Erb, Inc. Baton Rouge, La. Building and hardware supplies	From points in Georgia, New York, Pennsylvania, Florida, Alabama, to Baton Rouge. Shipments range between 36 and 3,700 pounds	Cole, Mason & Dixon, Ryder, McCombs, Strickland, Herrin, Saia, Inc., Braswell	Needs faster service. Average transit time 5 days	Bowman, Johnson, Roadway and Herrin
29 (556) Baton Rouge, La.	See shipper under North Carolina heading			
30 (558) Beco, Inc. Monroe, La. Electrical equipment and supplies	From Atlanta, Ga., Trenton, N.J., Philadelphia, Pa., New York, N.Y., and Mathews, N.C., to Monroe. Approximately 300,000 pounds annually	Ryder, Herrin, Red Ball, Braswell	Needs faster service. Allows 10 days lead time from Trenton and Philadelphia and 10 days lead time from South Carolina and Atlanta	Bowman, Johnson
31 (562) Lafayette Woodworks Lafayette, La. Millwork	From Birmingham, Ala., to Lafayette, La. Shipments range between 40 and 374 pounds.	Ryder, Herrin, Saia, Red Ball, Southern.	Wants second morning service from Birmingham to Lafayette. Currently allowing 4 to 5 days lead time.	Herrin. Testimony indicates that shipper is not in complete control of routing. Specific complaint against Ryder and Saia. (claims).
32 (564) Castille Wholesale Specialty Company Lafayette, La. Plastic flowers and wreaths	From Montgomery, Ala., and Ridgefield, N.J., to Lafayette. Shipments range between 41 and 675 pounds.	Johnson, Nola, Saia, Herrin, Dixie, Cole, Ryder, B'Ham	Needs faster service. Average transit time 7 days including weekends	Herrin. Transit study does not include all shipments which moved during the study period.
33 (567) Howard Stark Company, Inc. Thibodaux, La. Candy	From Thibodaux to points in Alabama, Georgia, Florida, and Mississippi	Herrin, Saia, Ryder, Southern, Red Ball	Wants regular daily pick-up	Herrin. Traffic is seasonal.
34 (569) Robinson Bros., Inc. Baton Rouge, La. Auto parts	From Atlanta, Ga., Baton Rouge. Between 1,000 and 1,500 pounds moves monthly	Ryder, Cole, Red Ball	Joint line service inadequate. Allows 5 to 6 days lead time from Atlanta to Baton Rouge wants faster service.	Red Ball.

Summary of evidence of supporting shippers—(Continued)

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
35. (570) The Princeville Canning Co. St. Francisville, La. Canned sweet potatoes	From Francisville, La., to Atlanta, Ga. Approximately 1 million pounds annually.	IC, MAB, L & N, Red Ball, Dixie, Gordons, Lisbon, Ryder, West Texas, Colo.	Joint-line service inadequate. Want proposed service.	Red Ball Traffic is seasonal.
36. (571) Dixie Office Supply Co. Lafayette, La. Office supplies	From Atlanta, Ga., and Birmingham, Ala., to Lafayette. About three shipments a month from Atlanta ranging between 150 and 633 pounds and about two shipments monthly from Birmingham averaging about 300 pounds.	Ryder	Needs more consistent delivery service, and wants faster transit time. Feels that 3-day transit time from Birmingham is good service.	Red Ball. Shipper is using the single-line service of Ryder.
37. (572) Lighting, Inc. New Orleans, La. Electrical supplies	From Atlanta, Ga., to New Orleans. Weekly shipments ranging between 100 and 5,000 pounds.	Johnson, Baggett, Red Ball, Merrin, Ryder.	Johnson in handling claims and [illegible] week lead time.	Merrin.
38. (573) Morgan & Lindsey, Inc. Monroe, La. Clothing	From Atlanta, and Macon, Ga., and Birmingham, Ala., to Monroe. From Monroe to Greenville, Miss. Inbound daily shipments of about 950 pounds, from each point, and outbound shipments about 112,520 pounds for a 10-month period in 1968.	Brazwell, Merrin, Missouri Pacific, Ryder, Red Line, Red Ball.	Needs faster service. Average transit time from Atlanta is 4 days, from Birmingham 4 days, from Macon 3 days. (All include weekends). Wants 2-day service from Atlanta to Monroe and overnight service from Birmingham to Monroe. (No transit time figures given on outbound shipments).	Red Ball and Merrin. Traffic is seasonal.
39. (574) W.B. Utley Paint Co., Inc. New Orleans, La. Paint	From Chattanooga, Tenn., to New Orleans. LTL and truckload shipments of about 5,000 pounds twice a week.	[illegible]	Needs faster service. Wants consistent second-morning service.	Bowman. Baggett appears to be able to serve shipper in single-line service.
40. (596) Sun Lighting Fixtures, Inc. Monroe, La. Electrical fixtures and appliances	From points in New York, Pennsylvania, New Jersey, Massachusetts, Georgia, and Virginia, to Monroe. Shipments ranging between 30 and 1,295 pounds.	Red Line, Ryder, Red Ball, Acme Fast Freight, Perkins, Jack Cole, Pilot, ITW, T.I.M.E., Roadway, ATI, Murdock, Bell, Braswell, Merrin, Kavanaugh.	Needs faster service. Average time in transit is 8 days, including weekends.	Bowman, Johnson. Transit time does not include all shipment which moved during the study period.
41. (589) Stag Shop, Inc. West Monroe, La. Men's clothing	From Wilmsboro, S. C., Hickory, Winchester, Tenn., Sunbury, Pa., Attleboro, Mass., Northvale, N.J., Atlanta and Chamblee, Ga., and Birmingham, Ala., to West Monroe. Shipments range between 35 and 2,099 pounds.	T & P R.R., MOPAC Railroad, Merrin, Red Ball, Ryder, Thurston, T.I.M.E., ATI, JWL, WCL.	Joint-line service inadequate. Average transit time is 4 days including weekends.	Bowman, Johnson. Transit time does not include all shipments.
42. (597) Traction Tire Service, Inc., Morgan City, La. Tires and tubes	From Gadsden, Ala., and Akron, Ohio, to Morgan City. Shipments range between 38 and 403 pounds.	Ryder, Red Ball, Merrim, Bowman, Roadway.	Needs faster service. Wants 3 or 4-day service. Average transit time is 7 days, including weekends.	Merrin. Special orders often require expedited service.
43. (599) Ethyl Corporation, Baton Rouge, La. Dry freight and chemicals	From Baton Rouge and Orangeburg, S.C., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Virginia. From points in Massachusetts, New York, Pennsylvania, Virginia, Connecticut, and Delaware, to Baton Rouge. Outbound between 55 and 272,250 pounds moved to destination States for 3-month period 1968. Inbound between 160 & 6,900 pounds moves daily.	Akers, ETWBC, Roadway, Trickland, Ryder, Jones, Weston Smiths, Muckaby, Wilson, Stick, Poplarville, Woolwyman, Red Ball, Sale, Gordons, Merrin, Ball, Air.	Joint-line service inadequate. Average transit time is 5 days, including weekends, on inbound and outbound shipments.	Bowman, Johnson. Transit time does not include all shipments. It does not appear that Ethyl Corp. controls the routing of inbound shipments.
44. (600) Pelican Office Supply, Inc. Baton Rouge, La. Office equipment	From High Point, N.C., Greenville, S. C., and Birmingham, Ala., to Baton Rouge. Approximately 350,000 pounds annually.	Ryder, Consolidated, Cooperstate, Red Ball, Merrin, Gordons, Sample.	Wants faster service. Wants third-day service.	Bowman, Johnson.
45. (601) Copolymer Rubber and Chemical Corp. Baton Rouge, La. Synthetic rubber	From Baton Rouge, and Addis, La., to points in Connecticut, Massachusetts, New Jersey, and Maryland. About 4 million pounds, 105,000 pounds, 255,000 pounds and 25,000 pounds to respective destination States monthly.	Red, Johnson, Cooperstate, Consolidated, Ryder, Bonningway, Strickland, Akers.	Needs expedited service.	Johnson.

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Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
48. (602) Interstate Electric Co. (Division), Shreveport, La. Electrical supplies	From points in Connecticut, New York, North Carolina, Pennsylvania, New Jersey, Georgia, South Carolina, Kentucky, and Alabama to Shreveport. Approximately [illegible]	Herrin, Strick Line, Ryder, Red Ball, East Texas, Acme.	Lack of service; inadequate; Herrin only [illegible] transit time; [illegible] during weekends.	Bowman, Johnson, Shipper indicated that it had available one line service from some points, but did not indicate which points. Transit study includes all shipments during period.
49. (605) Standard Fittings Co., Shreveport, La. Iron and steel fittings	From Shreveport to points in Georgia, Alabama, Mississippi and Florida. Split shipments ranging between 500 and 2,000 pounds.	Herrin, Ryder, Red Ba[illegible]	[illegible] dependable [illegible] [illegible] single line service [illegible]	Bowman, Johnson. The single line service of Red Ball is available to shipments to Florida points, but Herrin and single-line service is available to Alabama points.
50. (606) General Electric Co. New Orleans, La. Electrical appliances	From New Orleans to points in Florida. Daily shipments ranging between 50 and 1,500 pounds.	Central, Johnson, Red Ball, Badger	Needs faster service. Presently [illegible] via East Coast. Time.	Herrin
51. (607) Strange Drug Company, Inc., Lafayette, La. Drugs	From Atlanta, Ga., and Northport, Ala., to Lafayette. Monthly shipments ranging between 150 and 350 pounds.	Herrin, Southern, Red Ball, Ryder, Safe	Needs faster service. Herrin [illegible] via present routing [illegible] Average transit time is [illegible] from Nashville, about 36 from Atlanta. Reasons included [illegible]	Red Ball. Transit study includes all shipments during period.
52. (608) General Office Supply Co., Inc., Lafayette, La. Office equipment	From Atlanta, Ga., and Birmingham, Ala., to Lafayette. Weekly shipments from 600 and 2,[illegible]	Ryder	[illegible] Rugs. [illegible]. Average transit time [illegible] [illegible] between 4 & 5 days [illegible]	Red Ball, Ryder offers similar transit time. Transit study includes all shipments during period.
53. (609) Dresser Industrial Valve, Alpine City, La. Valves	From Alpine City, to Atlanta, Ga., Birmingham, Ala.	Red Ball, Brawner, Herrin.	No other service	Red Ball
54. (610) AFCO Corp., Alexandria, La. Wallboard mats, moulding	From Alexandria to Atlanta, Ga., and Birmingham, Ala. About 10,000 pounds monthly	Red Ball, Safe Conveyor, Harper Bros.	Needs faster service. Wants [illegible] service.	Red Ball
55. (611) A.M.E. Warehouse, Inc., New Orleans, La. General commodities	From New Orleans to Mobile, Ala., and Pensacola, Fla., and from Ala. to Georgia, to New Orleans. All LTL shipments (volume and frequency of traffic not given.)	Herrin, Jones, Central, [illegible] and West, Southern Brown, [illegible]	[illegible] [illegible] pick-up & delivery - Good [illegible]	Herrin
56. (612) J. Aron Co., Inc. New Orleans, La. Sugar and coffee	From New Orleans and Sugream, La., to points in Alabama, Mississippi, and Florida. TL and LTL shipments are [illegible] volume and frequency of traffic not given.	West, Johnson, Central, Dixie, Jacksons, Huff	Herrin [illegible]	Herrin
57. (613) Godchaux, Inc. Baton Rouge, La. Merchandise sold in retail or department stores	From Atlanta, Ga., and Birmingham, Ala., to Baton Rouge. Monthly shipments range between 1,500 and 1,000 pounds.	Ryder, Herrin, Red Ball, SAIA, Brawner, Consolidated, Copperstate.	[illegible] Herrin [illegible] Herrin faster service. Average [illegible] time from Atlanta 4 days including weekends.	Red Ball. Transit time includes all shipments during period covered.
58. (614) Wright Root Beer Co. Baton Rouge, La. Bottle caps	From Birmingham, Ala., to Baton Rouge, La. About 17,000 pounds monthly.	Temple, Dixie, Red Ba[illegible], Ryder.	[illegible] Herrin [illegible]	Red Ball
59. (630) Monroe Wholesale Drug Co. Monroe, La. Drugs, hospital supplies	From points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Pennsylvania, Virginia, Georgia, North Carolina, and Washington, D.C., to Monroe. Monthly shipments range between 50 and 1,000 pounds.	Atlanta, Acme, Brawner, Johnson, Herrin, Akers, Kavanaugh, Harrison, Red Ball, East Texas, Red Line, Strickland, Ryder, Campbell, Bowman, Roadway, McLean, Ivernite, Mason & Dixon, PER, Pilot, T.I.M.E., N.T.	Joint-line [illegible] Herrin [illegible] service. Average transit time [illegible] days, including weekends	Bowman, Johnson. Transit study includes all shipments, during period.

Summary of evidence of supporting shippers--Continued

LOUISIANA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Applications supported and reasons
58. (6335) Elmer Candy Corp. New Orleans, La. Candy.	From New Orleans to points in Alabama and Tennessee. Weekly shipments ranging between 72 pounds and 1,741 pounds.	Campbell, Dixie, West Brothers.	Needs faster service.	Bowman.
59. (639) Sally Manufacturing Co., Monroe, La. Upholstery fabric furniture.	From Monroe to points in Florida, Maryland, Connecticut, New York, Pennsylvania, and North Carolina. About 20,000 pounds monthly.	East Texas, Cole, ETAHMC, Old Dominion, Akers, T.I.M.E., Rapid, Strickland, Thurston, Harper, Carolina, Overnite, Ryder, Broadway, Turner, RC, Standard, Mason & Dixon, Pilot.	Joint-line service inadequate. Wants faster service. Wants 4- to 5-day service to Northeastern points, and 2-day service to southeastern points.	Bowman, Johnson.
60. (640) American Reconstructors, Inc. Baton Rouge, La. Paintings, accessories and carpeting.	From points in Georgia, to Baton Rouge. Weekly shipments ranging between 250 and 1,000 pounds.	Red Ball, Ryder.	Prefers single-line service. Wants faster service. Presently allows between 7 and 9 days load time.	Harris.
61. (641) Flint Ink Corp. New Orleans, La. Printing inks.	From New Orleans, La., to Pensacola, Fla., Mobile, Ala., and Atlanta, Ga., and return. Weekly shipments averaging about 500 pounds.	Control, West Brothers, Johnson, Cole, Dixie.	Needs faster service. Wants second-morning service. Presently allowing between 6 and 9 days load time.	Harris.
62. (642) Kiere Floor Covering Co., Lake Charles, La. Floor covering, draperies and related supplies.	From points in Georgia and Tennessee to Lake Charles. Weekly shipments range between 300 and 3,000 pounds.	Harris, Ryder, Southern.	Wants faster service. Presently allowing between 10 days and 3 weeks load time.	Harris.
63. (643) Hoo-Arc Welding Supply, Inc. New Orleans, La. Gas and medical supplies and equipment.	From Atlanta, Ga., and Birmingham, Ala., to New Orleans.	Cole, Red Ball, Johnson, Ryder.	Needs faster service. Wants first-afternoon service from Atlanta, and overnight service from Birmingham. Average transit time is 7 days, including weekends.	Harris. Emergency shipments sometimes required. Transit times given were given were selected to show poor service.
64. (644) Schloemgaux Wholesalers Lake Charles, La. Vending machines, candy, cigarettes, chewing gum and other articles sold in vending machines.	From Atlanta, Ga., Birmingham and Montgomery, Ala., to Lake Charles. Monthly shipments ranging between 150 and 500 pounds.	Harris, Cole, Southern, Strickland.	Wants faster service.	Harris.
65. (645) Baton Rouge Wholesale Drug Co. Baton Rouge, La. Retail drug, store items.	From Atlanta, Ga., to Baton Rouge. Monthly shipments ranging between 8+ pounds and 19,233 pounds.	GFA, Ryder, Johnson, Cole, Consolidated, Southern, L & A, Gordons, Cole, Red Ball, West Brothers.	Joint-line service inadequate. Wants second-day service. Average transit time is 5 days including weekends.	Red Ball. Transit study includes all shipments from Atlanta during period covered.
66. (646) Nelson & Ewert Ford Co. Zachary, La. Automobile parts.	From Atlanta, Ga., to Zachary. About 1,000 pounds monthly.	Ryder, Cole, Greene, Red Ball, Greyhound Bus Line.	Prefers single-line service.	Red Ball.
67. (647) Superior Sewing Machine Co. Baton Rouge, La. Sewing machines and related items.	From Atlanta, Ga., to Baton Rouge. Weekly shipments ranging between 85 and 1,050 pounds.	Ryder, T.I.M.E., Red Ball, Cole.	Joint-line service inadequate. Wants 2-day service.	Red Ball. Emergency shipments sometimes required.
68. (648) (a) F. Strauss & Sons, Inc. (b) Gibson Wholesale Distributors, Inc. (c) Gulf Gibson Wholesale Distributors (d) S. Nichol Dry Goods Co. all of Monroe, La. Dress and children, wholesale goods for discount stores and dry goods	From Atlanta, Ga., Dallas, Tex., Memphis, Tenn., Birmingham, Ala., and Greenville, Miss., to Monroe, and return. Shipments range between 40 and 1,150 pounds.	Akers, T.I.M.E., Georgia Highway, Buckabee, Northern, Ryder, Red Ball, Kavanaugh, Viking, Harris, Campbell, Beaton, F & W, Gordons, Jones, Cole, R.C.A., R.C.M.L.	Needs faster service. Average transit time from Atlanta is 5 days and from Birmingham is 4 days.	Red Ball, Johnson. Transit time does not include all shipments during period.

Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
69. (666) Gym-Dandy, Inc. Bossier City, La. Lamp posts and playground equipment	From Bossier City to Richmond, Va., Baltimore, Md., Washington, D.C., Wilmington, Del., and points in Pennsylvania. About 80 million pounds moves annually.	Strickland, Red Ball, East Texas, Herrin, A.B.F., Braswell, Rail, Bowman, Roadway, T.I.M.E.	Joint-line service inadequate. Wants faster service.	Bowman, Johnson
70. (680) Noah's Potato Chip Co. Alexandria, La. Corn chips related items and cellophane	Between Atlanta, Ga., on the one hand, and, on the other, Alexandria. About 3,840 pounds weekly.	Johnson, S.P.T., Red Ball, Ryder, Central, Cole, Air Express	Prefers single-line service. Wants between second-morning and third-morning service.	Red Ball
71. (748) Traffic Signals, Inc. Shreveport, La. Traffic signals and controls	From Shreveport to Atlanta, Ga. (as a gateway to Southeastern States) and Birmingham, Ala. Shipper presents no volume figures. Receives occasional shipments from Decatur, Ga.	Red Ball interlining with Cole and Campbell, Ryder, Central.	[illegible] single-line service to ease tracing problem and obtain faster deliveries. Allows 5 to 6 days lead time from Shreveport to Atlanta, 7 days on Florida shipments.	Red Ball. ETNF has direct service from Shreveport to Atlanta.
72. (750) W.L. Sommer Company Shreveport, La. Pumps (unbound)	From Commerce, Ga. to shipper's facilities at Shreveport and Houma, La. and Houston, Tex. Receives one or two shipments a day at Shreveport; three shipments a week at Houston, and about one shipment a week at Houma. Each shipment may weigh from 85 to 500 pounds	Northern to Atlanta T.I.M.E. to Memphis and Red Ball delivering to Shreveport. Northern to Roadway which delivers to Houston Ryder, Johnson	Too much time delay on shipment to Shreveport and Houma.	Red Ball. Service to Houston is satisfactory. Johnson interlining with Red Ball at New Orleans can offer a two-line service.
73. (1[illegible]) Schevelle Homes Manufacturing Corp. Pineville, La. Parts for mobile homes	From Atlanta, Ga. and Birmingham, Ala. to Pineville. Receives 10,[illegible] pounds a month from Atlanta area. Weight ranges from minimum to 2,000 pounds. Receives weekly shipments from Birmingham averaging 900 pounds.	Ryder, Cole, Georgia Highway and West [illegible] lining with Red Ball.	Wants faster transit time and a single-line service. Wants third-morning service from Atlanta and Birmingham.	Red Ball. The proposed service [illegible] not be single-line.
74. (794) Regal Plastic Supply Co. Shreveport, La. Plastic sheets, rods, tubing and film	From Cartersville, Ga. to Shreveport. Receives two or three shipments a month totalling 4,000 or 6,000 pounds. From Shreveport to points in Arkansas, Mississippi and to Birmingham, Ala. Ships standard cases weighing 540 pounds, some quantities shipped with less weight	Ryder, Southwestern, ABF, East Texas, Red Ball	Needs a responsive service to meet government contract deadlines.	Strickland. If application were granted Strickland still could not serve Cartersville direct. Present service of Red Ball seems to be adequate. Has several carriers presently available with single-line and joint-line service.
75. (802) Dittco Products Co. Monroe, La. Steel doors and frames	From Monroe to Greenville, Miss. (200 to 25,000 pounds two times a month) and Atlanta, Ga. (occasionally 200 pounds)	Red Ball, Red Line, Ryder, Herrin	Shipper has lost sales in Atlanta because of poor service. Believes market can be expanded with good single-line service to Atlanta. Shipper has experienced damage in joint-line service	Red Ball. Only has one customer in Florida
76. (817) Nabors Trailers, Inc. Mansfield, La. Axles, wheels, tires, bearings, steel, aluminum	From Montgomery, Ala. to Mansfield. Receives from Montgomery once a week 1,000-2,000 pounds.	AAA, Ryder Red Ball, East Texas, Dixie	Presently has a three-line service. Wants a two-line service.	Red Ball. Several two-line hauls now available over various gateways. Has no specific complaints.
77. (820) Waller Ford Company Haynesville, La. Auto parts	From East Point, Ga. (within the Atlanta Commercial Zone) to Haynesville. Receives one shipment a week averaging 500 pounds.	Ryder interlining with Red Ball	Wants single-line faster service. Allows lead time of 5 or 6 days.	Red Ball. It appears Herrin offers single-line service. REA can also handle the small shipments. Shipper has been using Ryder and RB for 14 years and has no specific complaints.
78. (823) Westinghouse Electric Supply Company Baton Rouge, La. Articles handled by electric supply houses	From Atlanta, Ga., Birmingham, Ala., and Jackson, Miss., to Baton Rouge. From 1/8/66 to 11/3/66 received in excess of 130 shipments from the above points. Average weight about 200 pounds a shipment.	Ryder, Gordon, Sais, Red Ball, Campbell, Valley, West, JMC, Cole, Johnson	Present service is too slow. Wants second-morning service from Jackson to Baton Rouge and one-day service from Atlanta and Birmingham to Baton Rouge. Shipper's transit time study shows that it is generally receiving 3.6-day service from Birmingham; between 4 and 6-day service from Atlanta; and 3 day service from Jackson.	Herrin. Ryder now gives 2-day service as shown by the exhibit. In many cases shipper does not select the originating carrier.

Summary of evidence of supporting shippers--Continued

LOUISIANA--Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
79. (835) Louisiana Valve and Fitting Company Shreveport, La. Industrial valves and fittings.	From Shreveport to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Ships three times a week to Birmingham averaging 1,000 pounds. Ships once a week to Atlanta averaging 500 pounds. Ships five or six times a year to Greenville.	Ryder, Red Ball, East Texas.	Wants overnight delivery to Birmingham and second-day delivery to Atlanta.	Red Ball. Shipper has single-line service to Atlanta and Birmingham
80. (835) Bonded Warehouse of Monroe, Inc. West Monroe, La. Numerous items stored in a warehouse (ink)	From Atlanta and Stone Mountain, Ga. to West Monroe. Receives between 100,000 and 120,000 pounds a month	Braswell, Red Ball, Ryder, Dixie, ETMF.	Much of shipper's traffic is of an emergency nature and expedited deliveries are essential. Existing service is too slow. Allowing lead time of 4 to 6 days from Atlanta. Wants overnight, second-day service.	Red Ball.
81. (887) Specialty Dept. Stores, New York, N.Y. General merchandise.	From Charlotte, N. C. and Atlanta, Ga. to shipper's stores located at Shreveport, La. and San Antonio, Austin, Dallas, Fort Worth, Irving, Garland, and Corpus Christi, Tex. From 7/6/66 to 11/23/66 shipper moved 40 shipments to the involved territory. No weights given.	Bowman, ETMF, ETHMC, Huckabee, Murdoch, Braswell, SWT, SPT, Red Arrow, Central, Consolidated Roadway, Overnite, New Dixie.	Wants improved transit time. Wants overnight service from Charlotte to Memphis. Average transit time is about 8 days including weekends. Wants consistent 3 or 4-day service.	Strickland. Strickland can now serve many of the involved points by using Memphis gateway but shipper has never used this service.
82. (905) Liddell Company Shreveport, La. General sundry items.	From Atlanta and Augusta, Ga., Chattanooga, Tenn., and Montgomery, and Birmingham, Ala. to Shreveport. Receives about 250,000 pounds a year from the above points. All are LTL shipments.	T&P, Red Ball, Universal, Merrin, ETMF.	Wants faster service. Allows lead time of 3 to 4 days but requires 1 or 2-day service.	Bowman, Johnson. Shipper supplier's generally choose the carrier.
83. (917) Five stores. See shipper under Pennsylvania heading				
84. (927) P. Lorillard Co., Inc. (USCO Products Co.) New York, N.Y. Animal food.	From shipper's facilities located at Golden Meadow and Lockport, La., to points in Alabama, Georgia, North Carolina, and South Carolina. Annual projected tonnage to points in the above States is about 11 million pounds.	Plant not yet in production. Only interstate carrier with authority to serve Golden Meadow is Merrin.	Wants motor carrier service at its new plant. Wants 2 or 3-day service to Alabama, Georgia, and Carolinas with stopoffs enroute.	Bowman

MARYLAND

1. (859) Proctor Silex, Inc. Baltimore, Md. Electrical appliances.	From Baltimore to Little Rock and Pine Bluff, Ark., and to points in Mississippi, Louisiana, and Texas. During January 1967 shipper moved 248,780 pounds to the above points.	Freight Forwarders, Roadway, Johnson.	Wants faster transit time because shipper's distributors do not maintain inventories. Roadway refused to pick up a shipment because it did not have any power units available.	Shipper has single-line service of Roadway to many points in Texas. T.I.M.E. offers single-line service to Little Rock. Shipper has not tried joint-line service of Bowman over Memphis, Tenn., Gateway. Johnson also can serve many points directly.
2. (862) Standard Cap & Moulding, Division of Poly Seal Corporation, Baltimore, Md. Plastic bottles and tops.	From Baltimore to Dallas and Houston, Tex. and Little Rock, Ark. Ships 100,000 pounds a year to above destinations. Average shipment weighs 500 pounds.	Associated Texas Freight, Roadway, Trans-American, Bowman.	Wants faster, more dependable single-line service. Shipper has experienced delays, difficulties in tracing and in obtaining pick ups. Shipper was informed that Mercury refused to accept one of its shipments at Birmingham.	Bowman, Johnson. There are four carriers which have single-line service to the destination points. Shipper conceded that only at times is service poor.
3. (91c) (a) Baltimore Paint & Chemical Corporation, Baltimore, Md. (b) Symboloid Co. of Florida, Atlanta, Ga. Paints.	From Baltimore and Atlanta to points in Arkansas, Louisiana, Mississippi, and Texas. Ships about 300,000 pounds a month to the above destinations.	Bowman, Gordons, Transcon, ETMF, Ryder, West, Campbell, Roadway.	Present transit time is too slow. Shipper has encountered tracing problems. Wants 2-day service on TL and 3-day service on LTL from Baltimore to Arkansas, Louisiana and Mississippi, and from Atlanta it wants overnight service on TL and second-day service on LTL. From Baltimore to Texas it wants third morning on TL and fourth morning on LTL.	Bowman, Johnson. Shipper has several carriers available to it. Did not submit any evidence of long transit time. Consolidated has authority to serve points in Texas.

Summary of evidence of supporting shippers—Continued

MASSACHUSETTS

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
[illegible] (161) United Merchants and Manufacturers, Inc., New York, N.Y. Finished cotton piece goods and finished and unfinished synthetic piece goods and draperies.	To points in the Southwest. Shipper has movements from its plants and warehouses located at Fall River, Mass., and City, Conn., Statesville, N.C., Old Fort, N.C., Clearwater, S.C. and August, Ga. Additionally, it has movements from numerous finishing plants on the East Coast (from Massachusetts to Georgia), to points in the Southwest. Several million pounds move annually. Its Dallas, Tex. plant alone receives 1 million pounds annually from the East and Southeast. Practically all shipments are LTL weighing a minimum to 15,000 pounds. Most shipments weigh between 500 and 2,000 pounds.	Roadway is used from Clearwater to the Southwest. From New England points, Transamerican, T.I.M.E., Roadway, and Consolidated are used. From points in the middle Atlantic territory to the Southwest, Roadway, T.I.M.E., Strickland, and Transamerican are used in single-line service. Roadway and Ryder are used from North and South Carolina. Dixie, Huckabee, and Overnight are used from Clearwater to Atlanta. Thurston interlining with Red Ball is used from Statesville to Texas. Dixie interlining with Gordons is used from Clearwater. Roadway has rendered a daily pickup service at Clearwater for a number of years. Shipper's private fleet is used to transport draperies from Augusta to Dallas.	Shipper has had difficulty in obtaining consistent transit time to Houston and Dallas, Tex. It indicates a need for the proposed second-day service from Clearwater to Dallas, Fort Worth, and Houston. Shipper prefers single-line service. Ryder's service from the Carolinas has not been satisfactory and shipper has discontinued using it. During April 1966, 20 shipments, which may not include all shipper's traffic between these points during this period, weighing collectively 10,779 pounds, moved from Clearwater to Dallas through Atlanta. They were handled by Dixie interlining with Gordons. Some of the transit times were not given, but on those listed two shipments required 10 days; two 8 days; four 7 days; four 6 days; and two 5 days, including weekends. Between May 9 and May 13, 1966, Roadway, in single-line service, handled eight shipments weighing collectively 3,418 pounds from Clearwater to Fort Worth and Dallas. Three required 7 days for delivery; two 6 days; one 5 days; and two 4 days. Between May 16 and May 20, 1966, Roadway handled 13 shipments weighing collectively 7,022 pounds to the same points. One of the shipments received 8 days, one 7 days; seven 6 days; and four 5 days. Shipper does not consider the transit time satisfactory.	Johnson
[illegible] (172) Springfield, Mass.	See shipper under Connecticut heading			
[illegible] (857) Avco-Bay State Abrasive Products Company, Westboro, Mass. Abrasive products and grinding wheels	Outbound from Westboro to Houston, Tex.; Shreveport and Monroe, La.; and Jackson, Miss. Shipments move every Friday to above points. Weight range is minimum to 30,000 pounds.	Spector, ETMT, Roadway, Johnson, T.I.M.E., Strickland.	Wants faster service with less damage. Allows 1 week transit time to Houston. Wants proposed 4-day service (including weekends) to Houston.	Johnson. Shipper only ships on Fridays. There are numerous combinations of joint-line service available to shipper which have been untried. Shipper fails to cite specific complaints.
[illegible] (Bay State Wood Hand Inc., Fall River, Mass. Draperies	From Fall River to points in Louisiana, Mississippi, and Texas. Between 5,000 and 10,000 pounds in LTL lots are shipped to points in the destination States each day.	Yellow Fwd., Strickland, Acme, Midland, Transamerican, Hemingway, Terminal, Lone Star, Edwards, KX, McClean, Johnson, T.I.M.E., Consolidated.	Wants faster transit time and single-line service to avoid delays and eliminate tracing problems. Shipper has experienced delays in pickup service and has discontinued using Roadway.	Johnson. Transamerican can serve shipper from its terminal in Providence, R.I. Shipper wants single-line service to Tex.
[illegible] (881) Charlestown, Waltham, Ashland, North Easton, and Watertown, Mass.	See shipper under New York heading.			

Summary of evidence of supporting shippers—Continued

MASSACHUSETTS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (889) The Foxboro Company, Foxboro, Mass. Instrumentation.	From Foxboro (house carrier to Boston, Mass. or Providence, R.I.), to points in Texas and to Baton Rouge, La. During September 1966, shipper moved over 250 shipments to above destinations. Average LTL shipment was 58 pounds.	Texas, Strickland, Johnson, Intercity, T.I.M.E., Merchants, Red Ball, Alamo, Davis, Central, Yellow, Various Airlines, Akers.	Wants faster deliveries. Wants 4-day service.	Johnson. Strickland a several other carrie offer single-line se ice from Boston to points in Texas. Aka also serves shipper and the latter has n specific complaints.
7. (981)(a). Depol Plastics Inc., Worcester, Mass. Plastic houseware articles, (b) Worcester Toy Company, Worcester, Mass. Toys.	From Worcester to points in Texas, Louisiana, and Mississippi. Ships 2 million pounds a year to points in Texas; 10,000 pounds to points in Mississippi, and 250,000 pounds a year to points in Louisiana. Weight varies from 250 pounds to 5,000 pounds (LTL).	Johnson, ACE, Consolidated, Universal, Republic, Hennis, Transamerican.	Has some difficulty getting pickups. Wants shorter transit time. Roadway refuse to originate this shipper's traffic apparently because of Union problems.	Johnson. Shipper stat generally that most two-line services ha proven to be unsatis factory.
8. (926) Berkshire Hathaway Inc., New Bedford, Mass. Textiles.	From shipper's facilities at New Bedford, Fall River, and Dodgeville, Mass.; Rockford, Dal.; Warren and Kenyon, R.I.; Pleasant Valley, N.Y.; and Rockville, Conn., to points in Louisiana and Texas. During September 1966 shipper had 27 movements to points in Texas. Average weight was about 250 pounds.	Roadway, Transamerican, Johnson, Edwards.	Wants better transit time. Applicant's proposal would give 50 percent better transit time.	Johnson. Shipper controls about 50 percent of the shipment

MISSISSIPPI

1. (18) Atkins Saw Greenville, Miss. Saw blades outbound and files and hand tools inbound.	From Greenville in LTL shipments to its branch warehouse in Atlanta, Ga. and to points in the United States. Approximately 20,000 pounds moves from Greenville each day with the shipments weighing between 125 and 7,000 pounds. It receives collectively 25,000 pounds a day of inbound shipments from all the points to which it ships. The shipments weigh between 25 and 100,000 pounds. The 100,000 pound shipments are handled by rail. Shipper specified a number of points in Texas, Louisiana, and New Mexico to which it ships. It ships to the points Red Ball serves and proposes to serve.	Gordons transport LTL shipments from Greenville to shipper's branch warehouse at Atlanta in single-line service. Jones is used to Dallas and to Missouri points. Shipper uses the services of Boston, Arkansas-Best, Red Line, Campbell, Roadway, ETSWNC, F&W, and Viking. Additionally, the irregular-route services of Eagle, Osborne, and Superior are utilized.	Shipper wants overnight or second morning service to the Southwest. It does not want its shipments interlined at Memphis or Jackson because it increases transit time by 2 days. Shipper stated that one of reasons for supporting Strickland is to get lower rates. It has a competitor at Shreveport, La.	Red Ball, Strickland, and Jones.
2. (39) F.B. Ross & Company, Charlotte, N.C. Industrial chemicals and laundry supplies.	Inbound to shipper's branches at Jackson, Miss. and Baton Rouge, La. Pertinent shipments move from Boston, Mass.; New York, N. Y.; Morristown and Philadelphia, Pa.; Baltimore, Md.; Washington, D.C., Atlanta, Ga. and the Carolinas. To the Jackson branch between 60,000 and 70,000 pounds a month is shipped from the area served by Johnson. Baton Rouge tonnage is estimated to be between 50,000 and 60,000 pounds a month from the area Johnson serves. This traffic is both LTL and TL and does not include shipments handled by private carriage.	Shipper handles about 5 percent of its inbound shipments in private carriage. The TL shipments to Jackson move in private carriage or TOFC (Plan III). From Southern origins shipper uses Dixie, Red Ball, and Cole. From New England Associated interlining with Viking or Ryder, and Roadway interlining with Gordons. From Middle Atlantic States, Associated or Atlantic interlining with Viking. Pilot interlining with Merrin or Ryder, Carolina interlining with Boston, McLean interlining with Red Ball or Gordon, W.T. Crown interlining with West, Roadway interlining with Ryder, and Acme.	Shipper wants single-line service on its inbound traffic. It wants fifth-day service excluding holidays and weekends, from New England to Baton Rouge and Jackson. Transit time and consistency are important in order to maintain low inventories and properly serve customers. Shipper introduced an abstract of a random selection of 45 shipments made between 10/14/65 and 5/18/66 to show transit times from points on the East Coast to Jackson and Baton Rouge. Weekends and holidays are included in the computation. The transit times shown range as high as 8 days from points in Georgia, South and North Carolina; 12 days from New England; and 23 days from points in the Middle Atlantic States.	Bouman and Johnson. Shipper has not made any study of the dire service it is receivi from Ryder to Jackson and Baton Rouge. Shipper has not attempted to use Johnson's service from New England to New Orleans and have a connecting carrier transport the shipments the remaining 90 miles to Baton Rouge. Ryder provides single-line service between Atlanta, Ga. and Jackson. Shipper has had claims problems with Ryder.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
3 (73) Greenville, Miss. Port Commission. Also the Greenville Chamber of Commerce	The Commission coordinates inbound and outbound truck and rail shipments with barge lines over the facilities of the Port and Public Terminal Transfer at Greenville. The port handles considerable quantities of inbound shipments from Chicago, Ill. and St. Louis, Mo., points in Indiana, Kentucky, Pennsylvania, and other points located on inland waterways on commodities such as iron and steel articles, wine, grain, machinery, and other commodities. It is expected that by 1960 the transportation needs of Greenville will double the present needs.		It is believed that additional service is required from Greenville to points in southeast Arkansas.	Strickland.
4 (116) Building Products Company, Jackson, Miss. Formica	From Atlanta, Ga. shipper receives at Jackson four shipments a month with an average weight of 100 to 10,000 pounds. Shipper places an order every Wednesday and the traffic moves from Atlanta every [illegible]. Sometimes it requires service of emergency shipments in the middle of the week. Occasionally shipper's LTL traffic moves directly to the customer in Greenville, Miss.	Cole, Dixie, Georgia Highway, and West	Shipper wants Monday deliveries on shipments which move from Atlanta, Friday of every week. If the shipments are not received on Monday shipper does not have the materials necessary for its distribution which commences Tuesday of every week. Shipper is not satisfied with the transit time of the existing service. Transit times were shown on four shipments which moved during April 1966. Two Atlanta to Jackson. Three of the shipments [illegible] Cole. One was handled by Georgia Highway interlining with West at Mobile. The last shipment was mislaid and involved 14 days in transit including weekends. The three handled by Cole were delivered between 5 and 8 days including weekends.	Strickland. Shipper has not investigated the availability of direct service from Atlanta to Greenville. Ryder, Deaton, and Gordons serve from Atlanta to Jackson. Gordons must go through Memphis, Tenn.
5 (117) Climate Engineers, Inc. Jackson, Miss. Heating and air conditioning equipment	Shipper receives at Jackson 10 shipments a month from Dallas or Houston, Tex. and Staunton, Va. which have an average weight between 100 and 500 pounds. Some of shipper's traffic moves from Dallas to Greenville, Miss.	Braswell, Red Ball, Central Freight and Merchants are used on the Texas traffic. Jones provides single-line service from Dallas to Greenville. From Staunton Associated interlining with Viking.	Shipper wants overnight delivery service from Dallas, 2-day service from Houston, and 5- or 6-day service from Staunton. It terminated shipping from its Atlanta supplier because of the transportation service from this point. If it received consistent overnight service it would reinstate this traffic. Staunton traffic would be routed through Atlanta and handled by Associated interlining with Strickland if the application is granted. Shipper introduced a transit study showing (excluding 1 shipment requiring 16 days) on 17 shipments handled by Red Ball from Dallas (which represents one half of the traffic moving between these points during the period in question), excluding weekends, one shipment moved in 4 days and about one half the remainder were delivered in 2 or 3 days. Red Ball delivered one shipment from Houston in 2 days and one in 3 days. Also, excluding weekends Braswell delivered one from Houston in 2 days; Central interlining with Red Ball delivered a shipment from Cleburne, Tex. in 3 days; and merchants interlining with Red Ball delivered a shipment from Winters, Tex. in 4 days.	Strickland. Shipper does not have any complaints about the service rendered by Jones but it would rather use the services of a carrier with whose personnel it is familiar in case of problems.
6 (118) National Industries, Inc. Jackson, Miss. Outbound - automobile parts. Inbound - machinery, brass, wire-reels, electric cable and cable terminals.	Inbound shipments to Jackson are received from, Michigan, Connecticut, Ohio, New Jersey, Georgia, West Virginia, North Carolina, Texas, and Pennsylvania in TL and LTL lots several times a month. The shipments are routed through the Atlanta, Ga., Houston and Dallas, Tex., and Memphis, Tenn. gateways. Outbound shipments from Jackson move to Dallas, San Antonio, and Grand Prairie, Tex., Conway and Forest City, Ark., Louisville, Ga., and Holyoke and Boston, Mass. Its 50 or 60 outbound shipments each week weigh an average of about 150 pounds. Shipper expected to double its requirements in the next year.	Johnson, Deaton, Red Ball, Ryder, ETSWMC, Viking, ICX, and T.I.M.E., Deaton, Dixie, Ryder, and Cole are used between Jackson and Atlanta. Braswell and Red Ball serve from Jackson to Dallas	Shipper wants overnight service from Atlanta and Dallas, and second- or third-morning service from points in Michigan, Ohio, Pennsylvania, and New Jersey. A transit time study of shipments picked at random was introduced to show that the transit times shipper is receiving are not satisfactory.	Strickland.

Summary of evidence of supporting shipper—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
7. (147) Mississippi Wholesale Drug Company Jackson, Miss. Drugs, pharmaceutical items, and sundries.	Inbound from Atlanta, Ga. to Jackson. Shipper's busy season for inbound traffic begins in September of each year and reaches its peak in December. During these months its inbound shipments are about 70 percent higher than the other months. Between 1/1/66 and 5/31/66 shipper received a total of 150 inbound shipments from Atlanta, weighing 43,451 pounds. The shipments weigh from a minimum to 8,000 pounds. Usually they are LTL shipments. Shipper experienced an increase in business in the first 5 months of 1966 and expected the increase to continue.	West, Deaton, and Cole. Also, Georgia Highway interlining with Campbell is used; AGX interlining with Campbell, Deaton, or West is used and United interlining with Campbell is used.	Shipper wants a consistent 2-day or second-morning service excluding Sundays. The receiving shipper wants a consistent 2-day or second-morning service excluding Sundays. The receiving department is open on Saturdays. Shipper wants morning deliveries but it has experienced difficulty in obtaining them from West and Ryder. Time in transit and consistency of service are important because shipper's stock is limited and it is allowed a two percent discount if it pays within 10 days of the invoice date (shipping date). A transit time study of over 150 shipments delivered in the first 5 months of 1966 was introduced. Weekends and holidays were included in the computation. About 110 of the shipments were delivered in 4 or less days with about 40 shipments delivered in 2 days or less. The majority of the remaining shipments were delivered in 5 days.	Red Ball. Shipper indicates that it has a better claim ratio with Red Ball than with any other carrier it uses.
8. (149) Utility Supply Company, Inc., Jackson, Miss. Transformers, rods, nuts and bolts, and pole line hardware	Inbound to Jackson shipper receives two or three shipments a week from Birmingham, Ala. with a total weight on each shipment of between 4,000 and 10,000 pounds. Occasionally shipper receives inbound shipments from Tucker, Ga. Shipper's business had increased 50 percent in the year prior to the hearing over the previous year and it expected the increase to continue.	West is used. Campbell was used.	Shipper wants a consistent overnight service from Birmingham to Jackson. Time in transit is sometimes important because of emergency situations which result when a tranformer ceases to operate. Shipper has experienced difficulty with Campbell on emergency shipments. It indicates that West is not providing a better service. A need is expressed for the proposed overnight service.	Red Ball. Shipper has used Red Ball and is satisfied with its service.
9. (88) Mississippi Bearings, Inc. Jackson, Miss. Bearings, pulleys, pillow blocks, belts, sprockets, and power transmission equipment.	Inbound to Jackson shipper receives movements daily from Atlanta, Ga. The shipments weigh from less than 100 pounds to 600 pounds. Occasionally it receives shipments weighing between 3,000 and 4,000 pounds. The average weight is between 100 and 200 pounds.	Cole, Ryder, Deaton, GFA, West, Alabama-Georgia, and bus service are used from Atlanta to Jackson. Bus service is used for emergency shipments which require overnight service. Cole, West, Ryder, and Deaton render single-line service between Jackson and Atlanta. GFA interlines with West and Mobile, Ala.	Shipper is not satisfied with the service it receives from Atlanta. It expresses a need for second-day service, excluding weekends, on regular shipments. On emergency shipments it wants overnight service. Shipper introduced a transit time study covering 74 shipments which moved between 1/3/66 and 7/14/66. The shipments were handled in single- and joint-line service. A few of the shipments moved from points other than Atlanta. Including weekends about 45 of the shipments were delivered in 4 or less days. On the other hand, delivery sometimes required 6 days (on one shipment from New York which moved through Atlanta delivery required 8 days).	Red Ball. Shipper is not familiar with the single-line or joint-line service available between Atlanta and Jackson.
10. (189) Davis Wholesale Drug Company Jackson, Miss. Drugs, Pharmaceutical items, and sundries	Inbound from Atlanta shipper receives several shipments a week at Jackson. The shipments weigh from less than 100 pounds to several hundred pounds. Occasionally shipper will receive shipments weighing between 4,000 and 5,000 pounds. The average shipment weighs between 100 and 300 pounds.	Cole, Deaton, Ryder, Campbell, GHF, East Texas, Bowman, West, GFA, Overnight, and AGX. Cole's single-line service is used in most of the traffic. The joint-line services of AGX interlining with West, Bowman interlining with West, Bowman interlining with Brasswell, GFA with Brasswell, GFA interlining with West, and GRX interlining with West, are used. Deaton's and Ryder's single-line service is used.	Eighty percent of shipper's pharmaceutical traffic requires protective service to avoid freezing and about one third of this traffic requires protective service when the temperature is above 95 degrees Fahrenheit. Shipper wants the proposed overnight service from Atlanta to Jackson on 65 percent of its traffic. A transit time study was introduced covering some of the shipments from Atlanta (and from a few other points some of which traffic was routed through Atlanta to Jackson which moved between 3/12/66 and 7/14/66. The shipment were handled in single- and joint-line service. Of the approximately 100 shipments listed delivery was made in 5 or less days in the majority of cases including weekends. Some shipments had transit times of 8 days.	Red Ball.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
11. (201) Addressograph-Multigraph Corporation Jackson, Miss. Paper printed forms, liquid chemicals and business machines	Inbound to Jackson shipper receives movements from the central, eastern, southeastern, and southwestern parts of the United States. All shipments, except those from the southwest and some from the east coast, are interlined at Atlanta, Ga. or Birmingham, Ala. Traffic moves from Dallas, Tex. and on some of this traffic dropoffs will be made at shipper's new Monroe, La. branch. Some of shipper's traffic from the East Coast goes through the Nashville and Memphis, Tenn. gateways.	Johnson, Cole, Deaton, East Texas, Ryder, T.I.M.E., Viking, Red Ball, Dixie, Ohio Express, West, Universal and M & D.	Shipper wants 2-day service from Dallas and Grand Prairie, Tex. to Jackson. From Murray Hill, N.J., Cumberland Mills, Maine and Walpole, Mass., to Jackson. Shipper wants not more than 8 to 10 day service. From Cleveland, Ohio to Jackson shipper expects 4 or 5 day service. Shipper introduced a transit time study on shipments picked at random. Transit times include weekends and holidays. The study indicates that excluding weekends and holidays, Red Ball provided 2-day service in most of the listed shipments from Grand Prairie (Dallas) Tex. On interline shipments from Cumberland Mills and Walpole shipper didn't know the originating carrier and it was unable to breakdown the transit time. Shipper asserts that the existing service is unsatisfactory because of slow transit time.	Strickland. Red Ball promised shipper 2-day service from Grand Prairie.
12. (203) Cabell Electric Company Jackson, Miss. Electrical equipment and supplies	Inbound to Jackson shipper receives shipments from Atlanta, Ga., and Dallas, Tex. Shipments weigh between 300 pounds and 1,000 pounds.	Cole, Red Ball, West, GFX, Deaton, PC, Universal, GNE, McLean, Gordons, and Ryder.	Excluding weekends and holidays shipper wants overnight service from Atlanta and Dallas to Jackson. It also requires deliveries on Saturdays. Transit time is important because the items transported are not always stocked. An introduced transit study shows that during April 1966 (three shipments made during March were included) shipper had 19 shipments all but three of which moved over a weekend. Holidays and weekends were included in the computation of transit time. Six of the shipments moved from Atlanta. They were delivered by Ryder in 3, 4, and 5 days Cole in 3 days, and by Deaton in 7 days. Six shipments moved from Dallas by Red Ball. One was delivered in 3 days, three in 4 days, and two in 5 days.	Strickland. Applicant has proposed Saturday deliveries.
13. (204) Moore Line Products Indianola, Miss. Outbound wheel goods such as lawn mowers, rotary tillers, bicycles, and wagons. Inbound paint.	From Indianola between 8/1/65 and 7/26/66 shipper moved 898,000 pounds to Atlanta, Ga. and 194,000 pounds to Birmingham, Ala. About 85 percent of this traffic was LTL with the remainder TL. Inbound to Indianola from Atlanta shipper receives 2,500 pounds three times a week. Shipper expects a 15 percent increase in its business in the fiscal year beginning 8/1/66.	Gordons is used to and from Atlanta and Campbell to Birmingham.	Transit time is important to shipper on outbound traffic because most of its customers carry a small inventory. On inbound traffic transit time is also important because shipper does not maintain a large stock. On LTL shipments to Atlanta it allows 4 days for delivery.	Jones, Gordons and Campbell, unlike Jones, do not have a terminal in Indianola both of their terminals are located about 30 miles from Indianola. Shipper was not aware of any other single-line service between Indianola, Birmingham and Atlanta other than Gordons and Campbell and it has not investigated available service. Jones proposes next-day service to Atlanta and overnight service to Birmingham. Shipper has used Jones service and it is described as satisfactory.
14. (205) Billington Electronics Supply, Inc. Jackson, Miss. Industrial electronic supplies	Inbound to Jackson shipper receives shipments from Philadelphia, Pa., New York, N.Y., Elizabeth, N.J., and West Lynn and North Adams, Mass. Shipper receives about 1,000 pounds a month from primary suppliers in New York City. It receives three shipments weekly from Elizabeth, and at least one weekly from Bronx, N.Y., varying from a minimum to between 4,000 and 5,000 pounds. From Port Washington, N.Y., shipper receives shipments once every 2 months and from North Adams it receives 2 shipments each month.	Mason-Dixon, Ryder, Pilot, CFN, West, Viking, Dixie, and Campbell are used in two- and three-line service.	Shipper wants single-line service because present joint-line service increases the possibility of damage and increases the difficulty of tracing. It would like fourth-day service excluding weekends from eastern origins. Time in transit is very important because it cannot adequately stock the involved commodities. Shipper introduced an exhibit showing the transit times on a few of the shipments which moved from eastern origins between 12/3/65 and 4/7/66. Only those shipments which could be fully documented were chosen and weekends were included. All but 2 of the 9 shipments moved from New York, N.Y., including the Bronx, and Elizabeth, N.J. The transit times were between 5 and 15 days with the average being about 6 days.	Bowman and Johnson. Shipper did not know either of the applicants existed until this proceeding began. It has not considered using applicants to originate the traffic and interline it at Atlanta. It did not know how many carriers offer single line service between New York, Atlanta, and Memphis.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
15. (306) Mississippi Bedding Company, Inc. Jackson, Miss. Piece goods, fabrics, mattress binding, tape, and springs.	Inbound to Jackson shipper receives traffic from North and South Carolina, New York, Georgia, Massachusetts, and New Hampshire. Inbound shipments weigh between 500 and 1,700 pounds each and weigh a total of 5,000 pounds monthly. They move mainly from Roanoke Rapids, Rutherfortom, High Point, Wadesboro, Concord, and Greensboro, N.C.; Chesterfield, Sumter, Batesburg, Walhalla, Carlisle, and New Berry, S.C., Augusta, Atlanta, and Commerce, Ga.; New York, N.Y., Portsmouth, N.H.; and Canton, Mass.	Gordons, Carolina, Deaton, Overnight, Cole, Ryder, Johnson, Roadway, Volunteer, Brownsville, St. Johnsbury, T.I.M.E., Viking, Norven, Tennessee-Carolina, Hockaboe, Cape Cod, Auclair, White and ETSWC.	Shipper wants second-morning service from Georgia and the Carolinas and 4- to 6-day service from points in New Hampshire, Massachusetts, and New York. Transit time is important because shipper keeps its inventory low. Shipper prefers single-line service because it facilitates the tracing of shipments. It introduced an exhibit showing the transit times on about 66 percent of the shipments from the involved origins between 11/1/65 and 4/1/66. Weekends are included in the computation. Of the 48 shipments listed, most moved from Carolina points in between 2 days and 10 days. Shipments from Georgia involved transit times of between 1 day and 9 days from New Hampshire and Massachusetts the transit times were between 5 days and 11 days. From New York, N.Y. between 6 days and 9 days.	Bowman and Johnson. Johnson and Bowman together can serve most of the origin points. Neither, however, can serve Portsmouth, but Bowman provides interline service from this point. Shipper is willing to try the joint-line services of Bowman and Johnson. Present routings are selected by consignee and shipper only indicates to consignees which carriers are not to be used.
16. (307) Moss Point, Miss.	See shipper under South Caroline heading.			
17. (312) Greenwood, Miss.	See shipper under Arkansas heading			
18. (229) U.S. Gypsum Company Dallas, Tex. Hard and fiber wallboard and paint.	From its Greenville, Miss. plant shipper moves about 350,000 pounds a month to Dallas, Houston, Tyler, Longview, Waco, Bowmanr, Wichita Falls, and other major points in Texas. It also ships from Greenville to New Orleans, Baton Rouge, Shreveport, Alexandria, Lafayette, Monroe, and other points in Louisiana. Additionally, it ships approximately 75,000 pounds a month from its Dallas plant to Greenville.	Jones is primarily used. Occasionally, Campbell, Gordons and Deaton are used from Greenville. Jones provide protective service.	Shipper requires protective service (insulated trailers) for its water base paint in order to keep it from freezing. Jones service essentially is not satisfactory because it does not serve all points in Texas and shipper has experienced tracing problems with this carrier. Shipper has complained to Jones and the service has improved. Occasionally Deaton cannot supply equipment.	Red Ball and Strickland.
19. (240) Greenville and Jackson, Miss.	See shipper under Texas heading.			
20. (281) Lindsay Wire Weaving Company Florence, Miss. Steel wire cords, rods and tubes	From points on the eastern seaboard to Florence. From 1/66 thru 9/66 shipper received 10 shipments with an average weight of 500 pounds. From Florence to points in Alabama (one shipment a month), Georgia (one shipment every 3 weeks), Florida (one shipment each month), South Carolina (one shipment every 3 weeks), Virginia (one shipment every 25 weeks), Pennsylvania (one shipment every 2 weeks), New York (one shipment every 2 months). Each shipment weighs about 3,000 pounds.	Cole, Deaton, Shippers, West, Roadway, Mason, Johnson, Viking	Needs faster, more dependable service. Allows lead time of 7 days to Alabama and Georgia points and about 10 days to Florida, Virginia and South Carolina points. Shipper's transit study consists of only those shipments on which it received unsatisfactory service. It shows 18 shipments with average [illegible] days. Wants 2-day service from Florence to Alabama and Georgia points, 3-day service to Florida, South Carolina and Virginia and less than a weeks service to New York.	Johnson and Bowman.
21. (287) Bell Armounts Inc. Jackson, Miss. Textiles	From Rhode Island, North Carolina, South Carolina, Georgia, Virginia, Alabama and New York, N.Y. to Jackson. Receives 50,000 to 60,000 pounds monthly. Average shipment weighs 500 to 5,000 pounds. From 12/3/65 through 6/9/66 shipper had 90 shipments to above areas.	Roadway, Gordons, Akers, West, TCT, Viking, Strickland, Campbell 66, REX, Meadowcits, R.C., Overnite, Cole	Transit time is too slow. Shipper is billed as of date shipment was sent to carrier. Average transit time is 5 days. Times picked at random. Needs 2-day service from Carolinas, 3-day service from Mid Atlantic and 4-day service from New England.	Bowman and Johnson.
22. (426) American Paper Tube Co. Port Gibson, Miss. (22 miles west of Jackson). Synthetic paper and phenolically impregnated backing for textile industry.	From Lawrence, Mass., to Port Gibson. From Port Gibson to points in Georgia, Alabama, Pennsylvania, North Carolina, South Carolina, Connecticut, New Hampshire, and Tennessee. Inbound shipments range between 745 and 4,443 pounds monthly. Outbound shipments range between 10 pounds and 1,843 pounds monthly.	T.I.M.E., Viking, Red Ball, Southeastern, Deaton, Shippers Express, MJD, Roadway, Brownell, ETSWC, Overnite, Levine, Ryder, Piedmont, Atlanta Asheville, Jack Cole, Greenwood, Thurston, Hemingway	Ryder accepts only shipments it can handle in direct service and has a two-line restriction in its southern territory tariff. Wants 4-day service inbound, and faster service outbound. Average transit time is 16.5 days on inbound shipments from Lawrence. Shipper generally plans on about 10-day and 14-day service to South Carolina.	Bowman, Johnson. Transit time given does not include all shipments during period.

Summary of evidence of supporting shippers-Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
23. (*51) George E. Anderson Company Jackson, Miss. Electrical supplies.	Inbound to Jackson shipper receives movements from Dallas, Tex. and Atlanta, Ga. The shipments weigh between 10 and 6,500 pounds.	Red Ball, GFA, West, Braswell, East Texas, and Ryder. Ryder renders single-line service from Atlanta to Jackson, and Red Ball and Braswell provide direct service from Dallas to Jackson.	Shipper's customers complain about transit time from Atlanta and Dallas to Jackson. They have indicated that if transit time does not improve they will purchase from shipper's competitors in New Orleans, La. from whom they can obtain overnight service.	Strickland.
24. (*49) Overhead Door Company of Jackson, Jackson, Miss. Overhead doors and materials used in the installation thereof.	From Dallas, Tex. to Jackson, Meridian, Greenville, and Gulfport, Miss. From 20 to 30 shipments a month, ranging between 200 and 2,800 pounds.	Red Ball.	Needs faster service. Must now allow a week lead time. Average transit time to Jackson is 5.8 days including weekends.	Strickland. Transit time study represents one-third of traffic received during period.
25. (*550) Capitol Bolt And Screw Co. Jackson, Miss. Bolts, nuts, rivits, screws and related items.	From Statesville, N.C., and New Britain, Shelton, and Hartford, Conn., to Jackson. About 50 shipments every 2 months ranging between 65 pounds and 2,575 pounds.	Cole, West, Gordons, Deaton, Campbell, Johnson, Strickland, Caroline, Eastern, McLean.	Needs faster service. Shipper wants 4-day service from Statesville, N.C., and 5-day service from the New England area. Average transit time is 7 days including weekends.	Bowman, Johnson. Shipper has used Ryder's single-line service from Statesville, N.C., but was dissatisfied because of delays. Transit times introduced include all shipments.
26. (*552) Mississippi Ceramic Tile Co. Cleveland, Miss. Ceramic tile.	From Cleveland to Atlanta, Ga., Birmingham, and Montgomery, Ala., and return. Monthly shipments of 7L and 7L shipments ranging between 34,000 and 35,000 pounds.	Gordons, Malone, Roadway CT&WMC, E&W.	Needs faster service. Wants overnight service. Average transit time is now 5.3 days including weekends.	Jones. Shipper wants overnight service. Transit study does not include all shipments made during period covered.
27. (*583) Mid-South Contract Sales Co. Jackson, Miss. Carpets and household goods.	From Calhoun, and Rome, Ga., Hickory, N.C., Pulaski, Va., Dothan, Ala., and Austin, Waco, and Dallas, Tex., to Jackson.	Ryder, Braswell, Red Ba..., Campbell.	Needs faster service. Average transit time 5.4 days including weekends.	Strickland. Transit time study does not include all shipments during the period in question.
28. (*54) Mississippi Stationery Co. Jackson, Miss. Staples, envelopes, travel bags, carpets desk pads, and other office supply items.	From Atlanta, Ga., Birmingham, Ala., Dallas and Houston, Tex., to Jackson. Between 40 and 60 shipments a month ranging between 25 and 1,000 pounds.	Jack Cole, Ryder, Bowman, West, Campbell, Braswell, Deaton, Red Ball.	Needs faster, better time coordinated service. Wants overnight service. Average number of days in transit is 4.5.	Strickland. Transit study does not include all shipments moving during the study period.
29. (*585) Gilchrist Tractor Co., Inc. Jackson, Miss. Agricultural implements and machinery parts.	From Atlanta, and Cedartown, Ga., Charlotte, N.C., and Shreveport, La., to Jackson. Between 8 and 10 shipments a month ranging between 100 and 5,000 pounds.	Jack Cole, Ryder, Red Ball.	Needs faster delivery. Wants overnight service. The only shipment on the introduced transit time study shows 4 days elapsed time from Cedartown to Jackson.	Strickland.
30. (*587) Pepsi-Cola Bottling Co. of Jackson, Inc. Jackson, Miss. Cardboard cartons, glass bottles, wooden cases, etc.	From Atlanta, Ga., and Dallas, Tex. to Jackson. Shipments range between 100 pounds and TL.	West, Jack Cole, Campbell.	Needs faster service. Wants overnight service. Average transit time is 3.3 days.	Strickland. Shippers traffic manager indicates that it is only interested in inbound traffic from Atlanta and Dallas. Transit study does not cover all shipments.
31. (*588) Brent Marine Supply Co. Greenville, Miss. Chemicals, engine supplies and equipment.	From Atlanta, Ga., to Greenville, Miss. Between one and three shipments monthly weighing about 2,500 pounds.	Dixie, Gordons, Ryder, Deaton, Campbell, Shippers Exp.	Needs faster service. Wants overnight servi.e.	Bowman, Jones.
32. (*590) Cooling-Heating Supply, Inc. Greenville, Miss. Heating and air conditioning equipment.	From Atlanta, Ga., to Greenville and return; from Birmingham, Ala., to Greenville. Between 50 and 60 shipments during summer months ranging between 500 and 650 pounds. Shipments range between 124 and 2,099 pounds.	Ryder, Dixie, Jack Cole, Campbell, Gordons, Deaton, Shippers Exp., SKE.	Joint-line service inadequate. Wants overnight service. Average transit time is 5 days including weekends.	Bowman, Jones. Traffic manager: Transit study does not include all shipments during the period.
33. (*591) Metal Trims Inc. Jackson, Miss. Aluminum architectural fabrications.	From points in New Hampshire, New Jersey, North Carolina, Pennsylvania, Tennessee, Georgia and Alabama to Jackson. From Jackson to Washington, D. C., North Carolina, South Carolina, Virginia, Georgia, and Alabama. Inbound about 100,000 pounds monthly and outbound about 400,000 pounds monthly.	Campbell, Deaton, Gordons, Viking, West, Strickland, Pine, Ansara, MML, Cooper, Associated, Pilot, Cole.	Joint-line service inadequate. Wants faster transit time. Average transit time from New Jersey, New Hampshire, and Pennsylvania is 12 days, 5.5 days from Georgia, 7 days from North Carolina, and 12 days from Tennessee, including weekends. (No figures given for Alabama.)	Bowman, Johnson. Specific complaint against Gordons. Transit time study does not include all shipments during the period.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
34. (582). Automotive Warehouse Jackson, Miss. Auto parts	From points in New York, Pennsylvania, Connecticut, Massachusetts and Maryland to Jackson. Monthly TL and LTL shipments ranging between 25,000 and 30,000 pounds.	Akers, Associated, Gordons, Ryder, Carolina, Morris & Dixon, Harrison, McLean, Mo. Pena. Branch, Elkton, Jones, Viking, Deaton, Dixie, Cole	Joint-line service inadequate. Wants faster transit service. Average transit time 5 days including weekends.	Bowman, Johnson. Transit study does not include all shipments during the period.
35. (595) Nunna Barber & Beauty Supply Company Jackson, Miss. Cosmetic and other beauty supplies	From Long Island, Bronx, Brooklyn and New York, N.Y., Jersey City, N.J., and Philadelphia, Pa., to Jackson, approximately 40,000 pounds yearly.	Akers, Deaton, Gordons, Mason & Dixon, T.I.M.E. Viking, West, R.C. National Trans. National Carloading Universal	Joint-line service inadequate. Wants single-line for faster service. Average transit time is 7 days, including weekends from all origins.	Bowman, Johnson. Transit time does not include all shipments.
36. (596) Gentry Manufacturing Co. Jackson, Miss. Rubber stamps and marking supplies.	From Jackson to points in Rhode Island, Virginia, Massachusetts, New York, South Carolina, Maryland, New Jersey, Pennsylvania, North Carolina, Connecticut, and Washington, D. C. Daily shipments range between 44 and 898 pounds.	Dixie, Eastern, Gordons, Ryder, Roadway, McLean, Mason & Dixon, Pocono Manangway Stast, West	Joint-line service inadequate.	Bowman, Johnson
37. (635) Paine Refrigeration Supply Co. Jackson, Miss. Refrigeration and sheet metal supplies.	From Decatur and Atlanta, Ga., to Jackson. Between 10 and 15 shipments a month ranging between 100 and 1,500 pounds.	West, Ryder, Gordons Jack Cole	Needs faster service. Wants overnight service. Average transit time is 4 days, including weekends.	Strickland. Transit study does not include all shipments made during period.
38. (636) Southern pipe & Supply Co., Inc., Jackson, Miss. Plumbing, heating and air-conditioning supplies and equipment.	From Atlanta, Ga., and Dallas, Tex., to Jackson. Monthly shipments ranging between 100 and 1,300 pounds.	Ryder, Cole, Dixie, Red Ball, Davis	Wants faster service. Wants overnight service. Average time in transit is 4 days, including weekends.	Strickland. Shipper feels that it should receive overnight service from both Atlanta and Dallas. Transit study does not include all shipments during the period.
39. (638) Industrial Supply Co., Inc. Greenville, Miss. Industrial, mill and electrical supplies	From Atlanta and Ramp, Ga., Birmingham, Ala., Wilmington, Del., Baltimore, Md., and New Brighton, Pa., to Greenville. Between 25 and 30 shipments monthly, ranging between 500 and 1,000 pounds.	East Texas, Red Line	Needs more consistent service. Wants overnight service. Average transit time is 5 days, including weekends.	Strickland. Transit time presented was selected to show poor transit time, and does not include all shipments during the period.
40. (633) Scovill Manufacturing Co. Greenwood, Miss. Zippers	From Greenwood to points in Georgia, Alabama, Florida, North Carolina, and Kentucky. Weekly shipments range between 130 and 2,379 pounds.	Viking, Gordons, Campbell, Atlantic, Bowman, Deaton, Jones, ETNMC, Taylor, KEA, Buses & Airlines	Joint-line service inadequate. Wants overnight service to Georgia and Alabama, second-day service to North Carolina and third-day service to Florida.	Jones, Bowman
41. (639 Lewis Grocery Co. Indianola, Miss. Drugs, notions, beauty aids.	From Atlanta, Ga., to Indianola. About 15 shipments weekly averaging 2,930 pounds.	Campbell, Gordons, Viking, Jones, United, Georgia Highway, Ryder, Bowman, West.	Wants single-line service. Wants overnight service. Average transit time is 6 days, including weekends.	Jones. Transit study does not include all shipments during period covered.
43. (647) Mississippi Refrigeration Company Jackson, Miss. Compressors, electrical motors, chemical solvents.	From Atlanta, Ga., and Birmingham, Ala., to Jackson. Monthly shipments ranging between 170 pounds and 2,000 pounds.	Cole, Ryder, Campbell, Dixie West	Wants faster service. Average time in transit is 5.1 days, including weekends.	Strickland. Transit study only covered about 40 percent of traffic during period.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
43. (654) Patterson Drug Stores Jackson, Miss. Drug store commodities.	From Atlanta, Ga., Fort Worth and Dallas, Tex. to Jackson. Between 30 and 40 shipments monthly, approximately 1,000 pounds a shipment.	Cole, Dixie, Ryder, Campbell, Deaton, West, Braswell, Red Ball.	Joint-line service inadequate. Wants overnight service. Average transit time is 4.8 days, including weekends.	Strickland. Transit study does not include all shipments during period covered.
44. (659) National Advertising Company Jackson, Miss. Signs and displays.	From Westminister and Baltimore, Md. to Jackson. Weekly shipments range between 230 and 6,100 pounds.	M&D, Deaton, Ryder, West, Mason & Dixon	Wants faster service. Wants between 2- and 4-days service Average transit time is 7 days, including weekends.	Bowman, Johnson. Transit study includes all shipments during period covered.
45. (665) Hayes Electric Supply Co. Jackson, Miss. Electrical supplies.	From Atlanta and Conyers, Ga., and Dallas, Tex. to Jackson.	Braswell, Cole, Red Ball, United, Campbell, Jones, Deaton, West, East Texas, Ryder, Georgia-Florida-Alabama Express.	Would like faster service. Wants overnight service. Average transit time 5.8 days, including weekends.	Strickland. Braswell and Red Ball can serve shipper from Dallas in single-line service. Transit time only includes three shipments during period with others stricken at hearing.
46. (670) Martwell Cook & Associates Jackson, Miss. Lighting fixtures.	From Atlanta, Ga., Chattanooga, Tenn., and Mineral Wells, and Dallas, Tex. to Jackson. Approximately 175 shipments monthly.	Ryder, Cole, Dixie, Central	Needs faster service. Wants overnight service from Atlanta and Dallas.	Strickland. No preference between single-line and joint-line. Specific tonnage not given.
47. (677) Flintkote Co. [illegible] Ga. Wallboard and tile.	From shipper's facility at Meridian, Miss. to points in Georgia, South Carolina and [illegible] shipments weekly.	Deaton, Dixie Highway, West, Campbell, equipment	Joint-line service inadequate.	Bowman. Shipper does have single-line service to some Georgia points. Commodities require flat-bed or convertevan equipment.
48. (715) Medard Lockers, Inc., St. Louis, Mo. School Lockers, basketball backstops, gym sets.	From shipper's Greenwood, Miss. plant to Atlanta, Ga. (14,000 pounds LTL during August 1968), Birmingham, Ala. (32,000 pounds LTL) and points in Florida (197,000 pounds LTL).	Campbell	Wants single-line service to Atlanta and Birmingham and to Florida using Bowman or interchange from the above points. Present service to slow. Wants overnight service to Birmingham and Atlanta. Wants 2-day service to northern Florida and 3-day service to southern Florida.	Jones and Bowman.
49. (769) Carothers Refrigeration Company Vicksburg, Miss. Steel shelving and accessories.	From Wilkes-Barre, Pa. and Atlanta, Ga. to Vicksburg. Receives 0 to 10 shipments a year from Wilkes-Barre LTL weighing 350 pounds. Receives six to seven shipments a year from Atlanta LTL weighing 250 pounds.	M&D, Red Ball, Jones, Ryder, Shipper Exp., Cole, Deaton.	Wants overnight delivery to Atlanta and generally faster service. Company is allowing 3 weeks lead time from Wilkes-Barre. Wants 5-day service from Vicksburg and overnight service from Atlanta.	Bowman. Deaton can serve Atlanta directly.
50. (773) R.G. LeTourneau, Inc. Vicksburg, Miss. General commodities.	From Highpoint (6 LTL a year, 750 pounds), Statesville (6 LTL a year, 750 pounds), and Charlotte, N.C. (1 LTL a month, 2,500 pounds), Atlanta (22 LTL a year), and Jonesboro, Ga. (occasional), Birmingham, Ala. (1 LTL a month), and Baltimore, Md. (occasional), to Vicksburg.	Byrd, Ryder, Red Ball, Shamrock, Cole, Bowman, West, ADX, Deaton, Ship. Exp., GFA.	Present transit time too long. Wants Bowman's proposed single-line service. Average transit time about 5 days. Wants 2-day service from North Carolina, 1-day service Georgia and Alabama and 2-day service from Maryland.	Bowman. Present service seems to be adequate. Shipper admits Red Ball's service is good.
51. (897) Meridian Manufacturing Company, Division of Roytex Co., Inc. Meridian, Miss. Piece goods and clothing.	From Meridian to points in Alabama, Tennessee, North Carolina, South Carolina, Georgia, and Florida. Ships daily to the above areas. No tonnage given. From points on the eastern seaboard to Meridian. For a 3.5-month period shipper received 65 shipments ranging in weight from minimum to 4,162 pounds.	Bowman, Cole, Campbell, Ryder, West, Dixie, Deaton, McLean, A&C, McGills, Tenn. White, Carolina, Brown, N.D.L., Overnite, Falk, T.I.W.E.	Wants faster service. Average transit time 7 days including weekends. Wants overnight service to Alabama, Georgia, northern Florida, and South Carolina. 2 days to central Florida, third-day service to southern Florida, and third-day service to eastern seaboard.	Bowman. Shipper is using carrier whose service is poor but it can use Bowman interlining with Campbell to all points involved and it indicates their service is good.

Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
52. (917) mine stores.	See shipper under Pennsylvania heading.			
53. (930) General Box Company Be-Plaines, Ill. Packing material.	From shipper's plant at Meridian to points in Georgia, North Carolina, South Carolina, and Virginia. During 1966 shipper had about 140 shipments to the involved territory. Average shipment weighed about 12,000 pounds.	Ryder, Cole, West, Campbell, Dixie.	Want single-line service. Allows 5 to 8 days lead time to involved area. Wants 2-to 3-day service.	Bowman. There are no specific complaints.
54. (932) United States Plywood Corporation Laurel, Miss Wooden doors.	Shipper wants single-line service from Laurel to Atlanta, Ga. Tonnage ranges between 2 and 3 million pounds a year.	Dixie, West, Bowman, Viking, Akers, Associated, Pilot, Ryder, Campbell, Old Dominion, St. Johnsbury.	Lost single-line service to Atlanta Gateway. Allows 10 to Carolina and Virginia points. Wants third- or fourth-morning service. In 1967 Campbell requested shipper to route its LTL shipments by other carriers.	Bowman. Shipper can use many other gateways to deliver goods to the East Coast.

MISSOURI

1. (40) Springfield, Mo.	See shipper under North Carolina heading.			
2. (213) Springfield, Mo.	See shipper under Georgia heading.			
3. (214) Fily-Tulip Cup Corporation, New York, N.Y. Paper cups containers, and related paper and plastic products.	(1) From shipper's plant at Springfield, Mo. to Birmingham, Mobile, and Montgomery, Ala.; Chattanooga, Tenn.; Atlanta and Augusta, Ga.; Jacksonville, Tampa and Miami, Fla.; Charleston, Columbia, and Greenville, S.C.; and Asheville, Winton-Salem, Charlotte and Raleigh, N.C.; (2) from shipper's Augusta plant to Springfield, Mo.; Little Rock, Ark.; Jackson, Biloxi, Vicksburg and Meridian, Miss.; New Orleans, Baton Rouge, and Shreveport, La.; and Dallas, Fort Worth and Houston, Tex.; and (3) from Holmdell and Hawthorne, N.J. to shipper's plant at Springfield. During 1965, it shipped from Springfield to points in the named destination States 3.3 million pounds, and from Augusta it shipped 8 million pounds. Inbound, from Holmdell and Hawthorne, to Springfield, it ships about 10,000 pounds monthly. About 50 percent of the traffic moved in LTL lots. The LTL shipments average about 1,500 pounds and the TL shipments weigh about 24,000 pounds.	From Springfield shipper uses Campbell interlining with Ryder, Hall, Thurston, and EY&WNC; T.I.M.E.; Campbell, Western Gillette interlining with Muckabee; and Leeway interlining with Hoover. From Augusta shipper uses Bowman interlining with West; Dixie interlining with Gordons; Johnson interlining with Campbell; Bowman interlining with Red Ball; Muckabee interlining with T.I.M.E.; Midwest interlining with Bemac; Spector interlining with Bemac; Johnson; and Spector. Shipper has also used Brown, Baggett, and Overnight.	Shipper is not satisfied with the transit time it receives from Augusta and the New Jersey points to the Southwest. It wants second- or third-day service, including weekends, on TL shipments from Springfield to points in North and South Carolina. Shipper has commenced using warehouses in Tampa, Miami, and Dallas, but would terminate their use if it received satisfactory transportation service. Transit time is important because shipper's customers have limited inventories. After initially refusing to accept an interlined shipment from Bowman moving from Springfield to Florida, Tamiami cancelled its concurrence on this traffic. Shipper introduced a transit time study on 44 shipments from Springfield. Transit times are given on 16 of the shipments which moved between 4/21/66 and 7/7/66. Six shipments moved to North and South Carolina. Including weekends, three shipments were delivered in 5 days, one in 6 days and one in 7 days. Seven shipments were delivered to points in Alabama. One shipment was delivered in 2 days. Including weekends, of the other shipments to Alabama, one shipment was delivered in 3 days, two were delivered in 5 days, and one was delivered in 7 days. Including a weekend and a holiday, one shipment was delivered in 7 days and another in 5 days. Three shipments moved to Chattanooga. Two of these were delivered in 4 days, and one, including a weekend, involved 11 days.	Bowman, Johnson and Jones.
4. (452) Sears stores.	See Shipper under Texas heading.			

Summary of evidence of supporting shippers—Continued

WISSOURI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
5. (687) Butler Manufacturing Co., Kansas City, Mo. Prefabricated stee. structure.	From Kansas City to points in Alabama, Florica, Georgia, North Carolina, South Carolina, and Tennessee. Monthly LTL and TL shipments range between 20 and 38,880 pounds.	Gordons, Roadway, Watson-Wilson, SLSF, Transcon, GMD, MOF, Delta Airlines, Arkansas Best,	Joint-line service inadequate. Wants between 3 and 4-day service	Bowman. Specific complaint against Watson-Wilson.
6. (69.) Chipman Chemical Co., North Kansas City, Mo. Tree and weed killing compounds	From North Kansas City to points in Alabama, Florida, Georgia and Tennessee. Monthly shipments range between 62 and 45,800 pounds.	Watson-Wilson, Gordons, Arkansas Best, Roadway, B&G, Southern P.B.	To assure delivery to small town. Wants between 2 and 3-day service	Bowman, Jones
7. (683) Tillery Containers Corp., Kansas City, Mo. Trouser guards and concrete test molds	From Kansas City to Atlanta, Ga., Greenville, Miss., and Birmingham, Ala. Monthly shipments range between 1,260 and 2,840 pounds	Red Ball, Watson-, Transcon, T.I.M.E., Gordons	[illegible] service. Existing carriers have been rendering [illegible] equipment	Red Ball. General complaints only. Shipper has never tried single-line service of Watson-Wilson to Atlanta. Clean vehicles are required to transport the involved commodities
8. (694) Hallmark Cards Inc., Kansas City, Mo. Greeting cards and related paper items.	From Kansas City to points in Florida. Shipments range between 25 and 1,0. pounds	Acme, Campbell, Gordons, Roadway, Towle, Ryder, A.E.A., Transcon, Universal Carloading, T.I.M.E.	Joint-line service inadequate. Shortages, mixups and delays with existing service	Bowman.
9. (696). L.T. York Company, Brookfield, Mo. Toilet preparations and drugs	From Kansas City, Mo. to Atlanta, Ga., Birmingham, Ala. and Greenville, Miss. Monthly shipments ranging between 100 and 1,000 pounds.	Campbell, Gordons, Transcon, Watson-Wilson, Roadway, T.I.M.E., A.E.A., Jones.	Prefer dependable service.	Red Ball. Shipper is satisfied with services to Atlanta. Arkansas Best, Campbell and Gordons serve shipper in single-line service to Greenville. With the exception of Roadway, there are no specific complaints against existing carriers.
10. (69[illegible]) The Vendo Co., Kansas City, Mo. Vending machines	From Kansas City to points in Alabama, Florida and Georgia. Weekly shipments range between 100 and 2,000 pounds.	D-C Rail, Bowman, Tennessee, Georgia Florida, Gordons, Campbell, Roadway, Watson-Wilson, T.I.M.E.	To meet competition in the involved area because of customer complaints.	Bowman. Shipper states that it has no complaints with existing direct service between Kansas City, on the hand, and, Atlanta, Ga. on the other. Red Ball. General complaints.
11. (696) Tubular Service Corp., Kansas City Mo. Steel and aluminum tubing	From Kansas City to Birmingham, Ala., and return. Weekly shipments range between 20 pounds and 40,000 pounds.	Campbell, Gordons, East Texas	Needs faster service and better pickups. Wants 3-day service. Average transit time is said to be 4 to 5 days.	
12. (703) Chase Bag Co., Inc., Kansas City, Mo. Yarn.	From Loveland, Tenn. to Kansas [illegible] Monthly shipments range between 2,122 and 5 [illegible] per pounds	[illegible] T.I.M.E., IML, Youngblood, Overnite	Wants faster service. Wants 4 to 5-day service. Average transit time is now 8.5 days, including weekends.	Bowman. Shipper considers transit time too slow. The study does not include ex. shipments for [illegible] period covered.
13. (704) Wilcot Electric Co., Inc., Kansas City, Mo. Radio equipment and supplies.	From Kansas City to points in Florida, Georgia, and South Carolina, from Gainesville, Fla. terminal. Inbound, about 150 shipments yearly, averaging about 235 pounds. Outbound, shipments range between 20 and 10. pounds.	Central, T.I.M.E., Hall, Parcel Post	Want single-line service. Average transit time is said to be between 3 and 4 days	Bowman, Jones
14. (706) Kansas City Western Express, Inc., Kansas City, Kans. General commodities	From Kansas City, Mo., to Atlanta, Ga. and Birmingham, Ala., and return.	None	To establish concurrence with Jones for service. Forty destination points involved in second-day service.	Jones. No indication of whether it interlines with other carriers. No volume, type, or frequency of traffic given.
15. (707) Gustin-Bacon Manufacturing Co., Kansas City, Mo. Insulation materials, glass fibre, industrial piping products, safety brakes.	From Kansas City to points in Alabama, Florida, North Carolina, South Carolina and Tennessee. Monthly TL and LTL shipments range between 31 and 13,57[illegible] pounds	Campbell, Pyare, Central, Baggett, Watson-Wilson, Alabama Highway, Thurston, Roadway, Viking, Tombosuch-Williams, Rob, KT, STL-NFL, Arila, Bowman, T.I.M.E., Ryder, ETAMK, Transcon	Joint-line service inadequate. Transit times range between 3 and 4 days.	Bowman, Jones, Red Ball.
16. (708) Fairbanks Morse Co., Kansas City, Mo. Pumps	From Kansas City to points in Alabama, Georgia, Florida, North Carolina, South Carolina and Tennessee. Monthly shipments range between 10,000 and 1,[illegible]00 pounds.	[illegible], Watson-Wilson, Roadway, Transcon, Tombosuch, Ryder	Prefers single-line service [illegible] averages between a week and and 10 days	Bowman, Jones, Red Ball.

Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
17. (711) Hamm Products Company, Stockton, Mo. and Gravette Shellings Company, Gravette, Ark. Black walnut kernels and soft abrasive grit.	From Stockton to Alabama (65 shipments in 1966), Georgia (48 shipments), and Florida (24 shipments). Each shipment averages 900 pounds. From Gravette to same destination points as above. From shipper's warehouse at St. Louis, Mo. to Birmingham, Ala. and Atlanta, Ga.	Humansville or Henley to Springfield, Mo., and interchange with T.I.M.E. to Atlanta and Campbell to Birmingham. Gordons from St. Louis. Campbell and Jones from Gravette.	Interline with as many as three or four carriers. Too much handling of product, which is in cardboard boxes, causes damage. Direct service would speed up deliveries. Wants proposed second day service from Springfield to Atlanta and Birmingham; third morning service from Springfield to northern Florida; and fourth morning to southern Florida. Wants 2-day service to Magnolia, Ark. Wants 2-day service from Gravette to Atlanta and Birmingham. Wants 2-day service from St. Louis to Atlanta.	Jones and Bowman.
18. (713) Hutchens and Son Metal Products Inc., Springfield and Marshfield, Mo. Freight trailer parts and wheels	From Marshfield to Atlanta, Ga. (8 to 10 shipments a month) and Texarkana, Ark. (1 shipment a week). Each shipment weighs from 800 to 1,500 pounds. Also from Marshfield to Atlanta, and then interchange to points south thereof (10 to 15 shipments a month).	Yellow, Watson-Wilson, Roadway, T.I.M.E., and Campbell to Atlanta by interchange. Campbell to Texarkana (with interchange).	Wants direct service to Atlanta for faster deliveries to Atlanta, and for interchange to points south. Wants 2-day service from Marshfield to Texarkana and Atlanta.	Jones.
19. (714) H.F.A. Packing, Springfield, Mo. Frozen, boned, and hanging meats.	From Springfield to Atlanta, Ga. and Birmingham, Ala. (one or two TL a week). Each load weighs between 39,000 and 42,000 pounds.	Campbell, Watson-Wilson, T.I.M.E.	Has had difficulty getting protestants to provide equipment with rails to transport hanging beef. Wants 2-day service to Atlanta and Birmingham, and 2-day service to Springfield.	Jones and Bowman. Refrigerated equipment is required. All movements in the past were made under government contract. Shipper has not bid on such a contract for over 7 years. It states that if it had appropriate equipment available it would bid on contracts.
20. (715) Chemagro Corporation, Kansas City, Mo. Insecticides	From Kansas City to points in Florida. Shipper moves about 1.5 million pounds a year to Florida in mostly TL lots.	Campbell, Transcon, Watson-Wilson, Gordons, Roadway.	Present joint-line service to slow. Wants single-line service to Florida. Wants third morning delivery to Florida on TL quantities and fifth-morning delivery on LTL traffic.	Bowman.
21. (716) McNeo Systems, Springfield, Mo. Binders	From Springfield to points in Alabama, Tennessee, Georgia, North Carolina, South Carolina and Florida. Thirty Orders a week move to this area with each shipment weighing an average of 700 pounds.	T.I.M.E., Roadway, Jones, Campbell, Air Freight, REA.	Wants faster delivery time to its southern area. Allowing 10 days lead time to points in the Southeast.	Bowman and Jones, T.I.M.E. renders single-line service from Springfield to Atlanta.
22. (717) The Marley Company, Kansas City, Mo. Cooling towers	From Kansas City to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. First 6 months of 1966 it shipped to Alabama (68,675 pounds), Florida (79,119 pounds) Georgia (88,950 pounds), North Carolina (154,990 pounds), South Carolina (81,321 pounds), and to Tennessee (about 70,000 pounds). Most are LTL shipments.	Watson-Wilson interlining with Ryder, Tenderbush interlining with Ryder and Central. Mail from Olathe, Kans. to Kansas City. Bowman over Atlanta gateway to Florida. Roadway interlining with Ryder and Central.	Faster service. Ease of tracing shipments in single-line operation. Damage less likely in single-line service. Average transit time is 4 to 7 days. Wants third or fourth morning delivery to the southeast.	Bowman.
23. (720) Nore Transportation Inc., Kansas City, Mo. Common Carrier	Due to a difference in equipment T.I.M.E., Transcon, Gordons, Campbell, Watson-Wilson, Yellow Transit and Roadway cannot interline with Nore. But Nore can interline with Jones. Nore operates generally between Kansas City and points in portions of Colorado, Oklahoma, Nebraska, and Kansas.		Wants to interline with Jones at Kansas City.	Jones. Primarily a [illegible] hauler.
24. (730) Carpe Inc., St. Louis, Mo. Clothing and shoes	From St. Louis to points in Florida through the Atlanta gateway. Ships 10,000 to 12,000 pounds in LTL lots a week to points in Florida.	T.I.M.E., Gordons, Ryder, MD & D.	Present service is too slow. Wants second morning delivery from St. Louis to Atlanta.	Jones. Never tried service of Watson-Wilson, Roadway, T.I.M.E. and Campbell. Shipper states that Roadway does not want to handle its traffic.
25. (731) Lee's Dressmo, Kansas City, Mo. Wool and synthetic piece goods	From Compana, S. C. to Kansas City. Traffic averages about 2,000 pounds a month. Each shipment weighs about 200 pounds.	Watson-Wilson by using Charlotte, N. C. and St. Louis, Mo. gateways.	Wants faster delivery service on inbound movements. Wants third day service to Kansas City.	Bowman.
26. (732) Wool Water Company, Wool, Mo. Water mains	From Birmingham, Ala. to Wool. Ships about 700,000 pounds annually.	Shipper indicates that it uses all existing services.	Needs scheduled job site deliveries. Wants 7-day service from Birmingham.	Jones. Need for transportation of the involved commodity only estimated through 1971. Never tried Campbell's single-line service from Birmingham.

Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
27. (733) Elder Manufacturing Company, St Louis, Mo. Piece goods	From points in Alabama, Georgia, North Carolina and South Carolina to shipper's plants at Webb City and Carl Junction, Mo. Receives about 800,000 pounds a year.	McLean interlining with Jones, and Youngblood with A & N and Jones.	Wants faster service in a two-line Jones and Bowman operation. Average transit time is 5 to 6 days, including weekends. Wants proposed 2-day service from the Atlanta gateway to Webb City and Carl Junction, and 2-day service from Carolinas, Georgia and Alabama to Springfield, Mo., at which point traffic will be interlined to shipper's plants	Jones and Bowman Can presently obtain a two-line Jones-Bowman service over Memphis gateway. It also appears that Roadway can provide a single-line service. The proposed operation of Jones and Bowman would satisfy shipper's long-haul needs with relatively short hauls at either origin or destination.
		NEW HAMPSHIRE		
1. (885) Nashua Corporation, Nashua, N.H Paper items	From Nashua to points in Texas, Louisiana and Mississippi. Ships approximately 1.2 million pounds a year to points in above States.	Strickland, Acme, Roadway, Consolidated.	Only has two carriers going to its most important marketing area. It wants the flexibility of a third carrier because of delays in transportation shipper has suffered losses under penalty clauses. Shipper is not receiving satisfactory service from interline carriers.	Johnson. Roadway has refused to handle partial shipments. Roadway and Strickland have authority to serve most of the destination points requested. Witness could cite only one specific instance of delay.
		NEW JERSEY		
1. (87) Wharton, N.J.	See shipper under Georgia heading.			
2. (172) Bound Brook and Princeton, N.J.	See shipper under Connecticut heading.			
3. (866) Deluxe Topper Corporation, Elisabethport, N.J. Toys	From shipper's facilities at Elisabethport and Plainfield, N.J., to El Dorado, Jonesboro, Little Rock, Pine Bluff, and Texarkana, Ark.; Columbus, Greenwood, Hattiesburg, Meridian, Vicksburg, Greenville and Jackson, Miss., Baytown, Beaumont, Dallas, Fort Worth, Garland, Greenville, Houston, Longview, Orange, Texarkana, Tex., and Baton Rouge, Monroe and Shreveport, La. Ships about 1 million pounds a year to above points 75 percent of tonnage went to points in Texas. Ships TL and LTL. Weight range is 300 to 12,000 pounds. Average is about 3,000 pounds.	Bowman, Transcon, Johnson, A.B.C., T.I.M.E., Roadway and Mason-Dixon.	Present service too slow. Wants direct service to Texas. Allow 10 to 14 days lead time. Wants fourth-morning delivery on TL and sixth to-seventh morning delivery on LTL to points in Texas and Arkansas. Wants third morning delivery on TL and fifth morning delivery on LTL to Mississippi and Louisiana points. Shipper unable to obtain pickup service from any carrier that offers direct single-line service to points in Texas. T.I.M.E. informed shipper that it could not handle its freight.	Bowman, Johnson. Shipper indicates that it takes from 10 to 14 days to transport toys to the involved points. Bowman and Johnson can presently serve shipper by interlining at Birmingham, Ala., or Memphis, Tenn.
4. (867) RSM Division, Smart Industries, Inc., Morristown, N.J. Welding equipment	From Morristown to points in Louisiana, Texas, and Mississippi. Ships about 150,000 pounds a month to points in the above States. Each LTL shipment weighs about 800 pounds.	Johnson, Roadway, Fillius Universal, T.I.M.E., Red Ball Central and Seko	Present transit time is too long. Wants single-line service so as to cut down on transit time.	Johnson. Johnson can serve most points by interlining. Shipper is also use a local carrier to Philadelphia and there interline to points involved. Some carriers offer single-line service to some points involved herein.
5. (895) Warner-Chilcott Division of Warner-Lambert, Morris Plains, N.J. Drugs	From Morris Plains, to points in Louisiana, Mississippi, and Texas. Ships 950,000 pounds (LTL) to points in the above States each year. Shipments range from minimum to 15,000 pounds. Average shipment weighs 890 pounds.	Acme, Texas, Strickland, Johnson, Tyndall, Cole Mason, REA, Yellow, Kitchell, Sea Land, Metro, McClven, and Roadway	Wants consistent service and fast transit time because its customers do not keep a large inventory. Having tracing problems. Wants protective service for freezable items during the winter months.	Johnson. Consolidated service (single-line) to Houston and Dallas has not been tried.
6. (919) Monroe International, Inc., Division of Litton Industries, Inc., Orange, N.J. Adding machines	From Orange to points in Louisiana, Mississippi and Texas. During 1966 shipper had in excess of 250 shipments to points in the involved territory. Average weight is 300 pounds.	Roadway, Republic, Cole, Universal, Johnson, Mason, and Harris.	Wants better transit time	Bowman, Johnson. No specifics given involving transit time. Shipper admits that Roadway gives good single-line service to points in Texas
7. (921) Continental Copper & Steel Ind., Inc., N.Y., N.Y. Copper and aluminum wire	From shipper's plants located at Millside and Linden, N.J., to points in Arkansas, Louisiana, and Mississippi. Shipper will ship 80,000 pounds a month to Arkansas, 60,000 to 90,000 pounds to Louisiana, and 60,000 pounds to Mississippi. These would be TL shipments. LTL shipments move to Arkansas (16 to 22 shipments a month), to Louisiana (35 shipments a month), to Mississippi, (30 shipments a month), and to Texas (15 shipments a month). Each LTL shipment will weigh from 1,200 to 2,000 pounds.	Strickland, Bowman, and Akers.	Desires single-line service. Transit time on LTL shipments is poor. Having difficulty with Strickland in picking up freight. Wants 3-day service from New Jersey on TL and 5-day service on LTL. Roadway has refused some shipments.	Bowman. Byrder can render direct service to most points. Many carriers can serve destinative territory by interlining at Memphis. This service has not been tried.

Summary of evidence of supporting shippers—Continued

NEW JERSEY—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
8. (#31) Buckton, Dickenson & Co., East Rutherford, N.J. Medical supplies	From East Rutherford, N.J., to points in Texas, Louisiana, and Jackson, Miss. From November 1966 to January 1967 shipper had 143 shipments weighing a total of almost 30,000 pounds.	Johnson	Wants single-line service.	Johnson, Bowman. Shipper has no specific complaints. Roadway & Strickland offer single-line service to Texas destinations. Ryder and Harris can serve shipper to Louisiana points.
9. (#41) A.B. Murray Co., Inc., Elizabeth, N.J. Pipe and tubing	From Elizabeth to points in Arkansas, Louisiana, Mississippi, and Texas. Shipments weigh from a minimum of TL. No volume figures given.	T.I.M.E., Gordons, Cole, Ab-Midland, Wilson, Strickland	Has poor pick-up service. Allows 5 to 6 days to destination points. Wants 3-day service to Arkansas, Louisiana and Mississippi.	Bowman, Morgan. No volume figures given. Sometimes converta vans are required.
		NEW MEXICO		
1. (#52) Albuquerque and other points in New Mexico	See shipper under Texas heading.			
		NEW YORK		
1. (#7) New York and Rochester, N.Y.	See shipper under Georgia heading			
2. (173) Pearl River, N.Y.	See shipper under Connecticut heading.			
3. (#8) (a)Wallace Candy Co., Brooklyn, N.Y. Candy. (b)Schaffts Candy Co., Charlestown, Mass. Candy (c)General Wholesale Supply Co., Waltham, Mass. Appliances (d)Sharon Bolt & Screw Co., Ashland, Mass. Bolts and screws (e)Dynamics, Inc., North Eastern, Mass. Fabrics, papers, and boards (f)White Control Corporation, Watertown, Mass. Light fixtures	From shippers' facilities at Brooklyn, N.Y., Charlestown, Waltham, Ashland, North Eastern, and Watertown, Mass., to Atlanta and from Atlanta to points in the Southeast. All shipments are LTL. No tonnage figures given.	Cole	Wants faster service.	Strickland. Shipper otherwise has no specific complaints with regard to existing services.
4. (#50) Orangeburg Manufacturing Company, Division of Filmtote Company, Orangeburg, N.Y. Fiber pipe and conduit, plastic pipe and coils	From Orangeburg, N.Y. to points in Texas, Arkansas [illegible] Ships about 1,000,000 pounds a year to points in itemized destinations. Some shipments are TL and others are LTL.	Coser, T & P, Transamericas, Navajo, Seaboard, Malone, Midwest, Bowman, Red Ball, Roadway, T.I.M.E.	Needs the services of a motor carrier which will interline or provide a sing.e-line service using flat-bed or converta-van equipment. Allows 10 days load time to points in Texas, Louisiana, and Mississippi, 7 days allowed to Arkansas points. Wants 3-or 4-day service to points in Texas, Arkansas, Louisiana, and Mississippi.	Bowman. Shipper has had some difficulty obtaining proper equipment. Bowman will not interline with flat-bed equipment. Shipper would have no difficulties if Bowman would permit its trailer to continue beyond the interchange point. Shipper needs flat-bed equipment.
5. (#39) Pleasant Valley, N.Y.	See shipper under Massachusetts list.			
		NORTH CAROLINA		
1. (#6) Thonet Industries of Statesville, N.C., New York, N.Y. Chairs	From Statesville to points in Louisiana, Mississippi, and Texas in addition to the points listed below. Shipments move almost daily to points in these three States and shipments to Dallas, Tex., move at least two or three times a week. Shipper has between 6 and 12 movements a year to each of 8 specified points in Arkansas with each shipment weighing about 600 pounds, except to Pine Bluff to which it has about 25 shipments a year with an average weight of 600 pounds. It ships between 40,000 and 50,000 pounds a year to Kansas City, Kans., and between 20,000 and 25,000 pounds a year to Topeka, Kans. Fifteen thousand pounds is shipped each year to Baton Rouge, La., and 10,000 pounds is shipped to Shreveport, La., annually. Approximately 50,000 pounds is shipped each year to specified Mississippi points, principally Jackson, Vicksburg and Columbus. It has a small amount of shipments to Lufthage and Springfield, Mo. Approximately 100,000 pounds a year is shipped to Texas with between 30,000 and 40,000 pounds moving annually to Dallas and Fort Worth, Tex. About 25,000 pounds is shipped each year to Houston, Tex., Most of the chairs are crated.	V&L is used to points throughout the destination territory to Kansas, Central handles the traffic to Chicago where it is interlined. To points in Louisiana, Ryder and Bowman with connecting carriers, except to points served directly by Ryder, to Mississippi Bowman and Ryder with connecting carriers. To Missouri, Central and Bell with connecting carriers. To Texas, Ryder, Thurston, Tennessee-Carolina, and East Tennessee with connecting carriers.	Shipper desires a direct single-line service to the named destination points to assure the provision of a through service eliminating the problem of return shipments where interline connections are not available. Also it feels that this type of service would simplify tracing, expedite movements, and enable it to expand the territory it serves. Shipper expects 3- to 4-day service to Arkansas and Kansas, 2- to 3-day service to Louisiana and Mississippi, and 3- or 4-day service to Missouri and Texas.	Bowman, Johnson and Jones. For a period, Ryder would not handle shipper's traffic.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
2. (31) Gillian Furniture Company, Statesville, N. C. Furniture	From Statesville shipper has 1,000 pounds a month to Little Rock, Ark., with minor shipments to other specified Arkansas points; 3,000 pounds a month to Kansas City, Kans.; 1,000 pounds a month to Topeka, Kans., 1,500 pounds a month to both Baton Rouge and Monroe, La. 2,000 pounds a month to Shreveport, La., 3,000 pounds a month to Jackson, Miss., 1,000 pounds a month to Meridian, Miss., 1,000 pounds a month to Beaumont, Tex., 6,000 pounds a month to Dallas, Tex., 3,000 pounds a month to Fort Worth, Tex., and 5,000 pounds a month to Houston, Tex. Shipments vary from minimum weights up to 2,000 pounds. The furniture is crated.	Acme is used on most shipments to Texas, Mississippi, Missouri, Kansas City, Topeka, Arkansas, and Louisiana. Thurston, interlining at Memphis with delivering carriers also handles Arkansas traffic. Ryder handles some of shipper's Louisiana traffic. Thurston also originates shipments to Louisiana.	Shipper desires second-day service to the destination points. The existing service is not satisfactory. Occasionally, Thurston will not be able to interline a shipment and must return it. It has had complaints of slow deliveries with Ryder.	Bowman, Johnson and Jones. Roadway does not handle shipper's traffic to points in Texas. Shipper uses Bowman and Johnson and is satisfied with the service rendered. It has never used the services of Jones. Thurston's service is described as satisfactory. Shipper has never routed its Arkansas traffic by Thurston-Jones through Memphis, Tenn. Shipper has never used Ryder's service from Statesville to Houston, Beaumont, Baton Rouge, or Jackson.
3. (35) Shaw Manufacturing Company, Charlotte, N.C. Furniture	From Charlotte shipper has movements to specified points in Arkansas, Mississippi, Florida, Kansas, Missouri, Alabama, Louisiana, and Texas. Between 100 and 200 shipments move from its plant to unspecified points each day.	Acme, a freight forwarder is used to points in Arkansas Tennessee Carolina interlining with T.I.M.E. at Nashville, Tenn., handles shipper's traffic to points in Kansas. Johnson or Thurston handle shipper's Louisiana and Mississippi traffic. The Mississippi traffic is delivered by connecting carriers. Acme or T.I.M.E. handle the Missouri traffic. Acme handles the Texas traffic. Haley Pool cars also handle shipper's traffic to Arkansas and Texas.	Shipper indicates that it does not have a single-line service from Charlotte that it can use. The pool car service is not satisfactory because shipments must be accumulated until they are sufficient in number to fillout a railroad car thereby causing delays.	Bowman, Johnson and Jones. Although Roadway may hold pertinent authority, shipper indicates that it refuses to accept furniture. Johnson's single-line service to New Orleans is described as satisfactory. Shipper was not aware that Jones could serve Kansas, Missouri, and Arkansas points in two-line service. Jones does not propose to serve Charlotte. Ryder's service has been used to points other than those involved but this carrier renders slow pickup service. T.I.M.E. serves many points in Texas on single-line service from Charlotte. Bowman and Johnson. Shipper was not aware of whether Johnson could [illegible] single-line service. Some of its shipments to Louisiana
4. (37) Statesville Chair Company, Statesville, N.C. [illegible]	From Statesville in 1965 shipper had LTL movements to Kansas City, Kans. (8,500 pounds), Kansas City, Mo. (16,750 pounds), Topeka, Kans. (2,900 pounds), Baton Rouge, La. (3,300 pounds), Monroe, La. (2,400 pounds), Shreveport, La. (7,900 pounds), Baytown, Tex. (3,300 pounds), Beaumont (2,200 pounds), Dallas (24,800 pounds), Fort Worth (3,200 pounds), Houston (3,100 pounds), Galveston (1,500 pounds), and Pasadena, Tex (1,500 pounds). Additionally, shipper has movements to named points in Arkansas, Mississippi, and Missouri.	To Kansas, ET & WNC originates the traffic and interlines with Campbell at Memphis, Tenn. To Louisiana, Tallant, a furniture carrier, is used. To points in Texas shipper uses freight forwarders and furniture carriers. To Mississippi shipper uses Bowman interlining at Memphis. Thurston and ET & WNC originate shipper's Missouri, Mississippi, and Arkansas traffic. Johnson is used in single-line service to some Louisiana points.	Shipper wants direct single-line service to all of its destination points. It desires 2- or 3-day service to Arkansas and Mississippi, 3- or 4-day service to Kansas, Louisiana, Texas, and Missouri. Freight forwarder service is not satisfactory because of the delays due to the need to accumulate freight. Tallant's service is not satisfactory because it is difficult to get it to make pickups.	Bowman and Johnson. Shipper was not aware of whether Johnson could [illegible] single-line service. Some of its shipments to Louisiana
5. (38) Reeves Bros., Inc., Curan Division, Cornelius, N.C. Foam plastic	From its Cornelius plant and its Charlotte, N.C. warehouse, shipper moves two shipments a month to both Little Rock and Jonesboro, Ark., with each shipment weighing between 150 and 500 pounds; one shipment a month to Hattiesburg, Jackson, Laurel, and Meridian, Miss., with each shipment weighing between 200 and 400 pounds; one TL shipment a month to Columbus, Miss., transported in customer's vehicles; one shipment every 2 weeks to Kansas City, Mo., weighing between 800 and 2,000 pounds; one shipment a month to Baton Rouge, Shreveport, and Monroe, La., with each shipment weighing between 200 and 400 pounds; two shipments to both Dallas and Houston, Tex., with each shipment weighing between 200 and 1,000 pounds	Dixie, Hennis, and Johnson originate its traffic. To the Arkansas points Dixie originates the traffic and interlines at either Atlanta or Savannah. Dixie and Johnson originate shipper's Mississippi traffic. Roadway and Hennis handle shipper's Missouri traffic. Hennis must interline the traffic. Johnson and Dixie handle shipper's Louisiana traffic. Dixie originates shipper's Texas traffic.	Shipper wants single-line service. Ryder does not make regular pickups at shipper's plant. Roadway assertedly is not rendering a satisfactory pickup service. Shipper does not feel that joint-line service is satisfactory because of the problems of tracing and 1 day transit time is lost for every interline. Shipper has a competitor in Texas	Bowman, Johnson, and Jones. Ryder holds single-line authority from the two North Carolina points to points in Mississippi and Louisiana, and Roadway can handle shipper's Kansas City traffic in single-line service. Ryder and Roadway serve Texas points in single-line service. Jones is not seeking authority from Cornelius or Charlotte. It would interline with either Bowman or Johnson if its application is granted. However Bowman and Jones can presently provide this service but shipper is not utilizing this routing.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (48) Bayuk Corporation, Dayton, Ohio. Rubber and plastic products outbound and fabrics, cords and yarn inbound	Outbound from shipper's Waynesville, N.C., plant and its Asheville, N.C., warehouse traffic moves to specified representative points in Arkansas, Louisiana, Mississippi, Missouri, and Texas. Shipments to these points aggregate approximately 7,500 pounds daily. Outbound from shipper's Springfield, Mo., plant traffic moves to specified representative destinations in Florida, Georgia, and North and South Carolina. Shipments to these points aggregate about 3,000 pounds daily. Inbound to the Springfield plant shipments move from specified representative points in Georgia and South Carolina. To the Waynesville plant shipments move from Baton Rouge and Lake Charles, La. Inbound shipments to Springfield aggregate approximately 300,000 pounds monthly and move in box car, TL and LTL service. To Waynesville inbound shipments aggregate between 40,000 and 50,000 pounds monthly and move in TOFC, TL and LTL.	Roadway handles shipper's traffic in single-line service from Asheville to Dallas and Houston, Tex. One of two named carriers originates traffic at Waynesville and interlines with Roadway at Asheville. ET & WNC serves Waynesville daily from its Asheville terminal. It handles shipper's Arkansas and Southwest traffic. ET & WNC originates shipper's Louisiana traffic and interlines with Herrin at Memphis. Also Atlanta-Asheville originates this traffic and interlines with Johnson at Atlanta. ET & WNC originates the Mississippi traffic and interlines with Campbell. Also, Atlanta-Asheville interlining with Johnson handles this traffic. To Texas, Blue Ridge originates Waynesville shipments and interlines with Roadway at Asheville. Also, ET & WNC originates the traffic and interlines it at Memphis with either Gordons or East Texas. Atlanta-Asheville also originates this traffic and interlines at Atlanta with Trevmans. Inbound to Waynesville from Baton Rouge and Lake Charles shipper is using Herrin to Memphis and ET & WNC to Waynesville; Ryder to Atlanta, T.C.Y. to Asheville; Blue Ridge and Ryder to Asheville and COFT to Waynesville. Between Waynesville and Springfield shipper uses ET & WNC interlining at Memphis with Western Gillette. From Springfield to Florida shipper uses Campbell interlining with Ryder at Birmingham; and T.I.M.E. with Central at Atlanta. To Georgia, T.I.M.E. to Atlanta and connecting carriers beyond. Roadway is used on shipments to Georgia and North Carolina. To South Carolina from Springfield Western Gillette interlines at Memphis with Thurston.	Shipper wants 2- or 3-day service on LTL shipments and 2-day service on TL from Waynesville to points in Arkansas. From Waynesville and Asheville to Louisiana points, shipper wants 2- or 3-day service on LTL and 2-day service on LTL. To Mississippi from Waynesville and Asheville shipper wants 3- or 3-day service. To Texas points shipper wants 3-day service from Waynesville and Asheville. Shipper introduced an exhibit dealing with inbound shipments to Springfield and with shipments from Springfield to Waynesville. During the first 9 months of 1966, 89 (only a portion of the total inbound shipments to Springfield) shipments from designated southwestern States weighing from 35 to 36,345 pounds requiring transit times between 3 and 16 days. Between 12/27/65 and 9/25/66, 32 (about 90 percent of the total traffic) shipments weighing between 211 pounds and 24,000 pounds requiring between 3 and 10 days transit time moved from Springfield to Waynesville. Shipper wants 2- or 3-day service on inbound shipments from Louisiana to Waynesville. On interplant movement between Springfield and Waynesville, shipper wants 2- or 3-day service. Roadway's service outbound from Springfield is described as inconsistent. If the Bowman and Johnson applications are granted shipper will divert traffic from its Atlant warehouse to Springfield. Eventually, it hopes to close its Atlanta warehouse and ship from Springfield This move would increase transit time to many points but it would allow shipper to be better able to supply its customers with the items they request.	Bowman, Johnson and Jones. Bowman serves shipper at Waynesville and Asheville. Johnson's services are used at Asheville. Shipper indicates that there is no single-line service from Waynesville. Approval of the applications would not affect motor carrier service from Springfield to Mississippi, Louisiana, Alabama, and Memphis, Tenn.
7. (98) Statesville and Old Fort, N.C.	See shipper under Massachusetts heading			
8. (125) Thayer Coggin Institutional, Inc. and James, Inc., High Point, N.C. Furniture	From High Point to points in Texas such as Dallas, Houston, El Paso, Corpus Christi, Lubbock and San Antonio. During a 12-month period it shipped 229,000 pounds into Texas of which 45,000 pounds moved to Dallas. The shipments are both TL and LTL. Shippers also have movements to Shreveport and Baton Rouge, La. During a 3-month period ending 3/30/66, 70 shipments weighing a total of 17,000 pounds moved to Dallas; 65 shipments weighing 14,000 pounds to Houston; 65 shipments weighing 13,500 pounds to Fort Worth; 7 or 9 shipments weighing 2,000 pounds to Shreveport; and 4 shipments weighing 700 pounds to Baton Rouge. About 70 percent of shippers' traffic to Texas moves by pool rail car	Shippers use two furniture consolidators, Daily and Security Warehouse. Also Acme, a freight forwarder, is used and Shamrock, a furniture carrier is used. ET&WNC was used but its connecting carrier refused to accept furniture shipments. Old Dominion handles shippers' traffic from High Point to Charlotte for loading by Acme	Shippers allow for 10- or 12-day service to the named destination points. Roadway and Ryder hold single-line service between the involved points but Roadway will not transport set-up furniture and Ryder's pickup service is described as poor. Shippers express a need for Johnson's proposed second-morning service to Dallas.	Johnson and Bowman. Johnson holds authority to serve High Point but it is not being used as an originating carrier. Shippers are supporting Bowman on an interline basis to Texas. They would use Old Dominion from High Point and the shipments would be interchanged with Bowman at an unspecified point.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
9 (211) Southern Dyestuff Company Division of Martin Marietta Corporation, Sodyeco, N.C. Dyestuffs in drums and in bulk	From Sodyeco during 1965 shipper moved 178,980 pounds (314 drums) to McKinney, Tex.; 51,920 pounds (56 drums) to Waco, Tex.; and 92,400 pounds (168 drums) to New Braunfels, Tex.	Roadway interlines at Dallas on shipments to the three Texas points. Akers' single- and joint-line services have been utilized. Ryder handles shipper's traffic from Charlotte, which is about 12 miles from Sodyeco	Shipper indicates that its commodity is subject to freezing at temperatures below 32 degrees Fahrenheit. Roadway has not assured shipper that its shipments will be protected from the cold. Johnson has assured shipper that it would provide a protective service to the points of interchange, namely Dallas or Houston, Tex.	Bowman and Johnson. Shipper is reasonably satisfied with the protective service rendered by Akers. It has not had any complaints that its product froze on shipments handled by Roadway during the winter months without protective service.
10. (467) General Electric Company, Hickory, N.C. Transformers	From Hickory to Dallas (1,753,000 pounds in first 8 months of 1966) and Houston, Tex. (2.1 million pounds). Average weight of each shipment is 28,000 pounds.	ET&WNC, Morrin, Thurston, Red Ball, Southern, Roadway.	Wants faster deliveries and single-line service to Texas points.	Bowman and Johnson. Shipper has not tried existing interline service at Memphis, Akers used the service of Bowman to Texas points. When Roadway has equipment available, it renders good service.
11. (528) Ulix Corporation, Gastonia, N.C. Oil filters, oil filter cartridges, and air cleaners	From Gastonia to points in Mississippi, Louisiana, and Texas. Approximately 15 million pounds move annually.	Robinson, Texas-Carolina, Ryder, Red Ball, Campbell, Roadway, Dixie, Akers, Viking, Gordons, Delta, Campbell, Freeman, Phillips, Ship Express, Thurston, Southern R. R.	Need faster, more consistent service. Average transit time about 3 days excluding weekend. Wants third morning service to all points.	Johnson, Bowman, and Roadway.
12. (548) Hyong and Miles, Co., Greensboro, N.C. Fabricating machines	From Greensboro to points in Texas. Shipments range between 50 and 35,000 pounds TL and LTL shipments.	Akers, R. C., East Texas, Thurston, Roadway, C & H Trans., Bell Trans., Morrin, Emery, Standard, Republic	Needs faster service. Wants second-morning service on TL shipments, and between 3- and 4-day service on LTL shipments.	Bowman and Johnson.
13. (556) Humble Oil and Refining, Houston, Tex. Petroleum products	From shipper's Charlotte, N.C., plant to points in Arkansas and Louisiana; and from shipper's plants at Baton Rouge, La., and Baytown, Tex., to points in North and South Carolina, Georgia and Florida. To Arkansas and Louisiana about 90 shipments totaling 9,434 pounds moved between January and July 1966. From Baton Rouge shipper expects to ship between 20,000 pounds and 50,730 pounds for any given 7-month period to the involved destination States. From Baytown 40 shipments totaling 244,241 pounds moved between 1/3/66 and 8/2/66 to the involved destination States	Tennessee-Carolina, Roadway, Bowman, Johnson, Red Ball, Boston, South-western, Western Gillette, Garrison, Mercury, SAIA, Jones, Red Line, Powell-Atlas, Viking, Pidmeahh, Ryder, Morrin, Tammani, Overnite, Dixie Highway, Merchants, Smith, Waters, East Texas, Carolina Norfolk	From Baton Rouge and Baytown shipper wants third-or fourth-day service to Florida into Georgia. North and South Carolina shipper wants second-day service from Baton Rouge and second- or third-day service from Baytown. Shipper generally states that it is not altogether satisfied with service to Arkansas and Louisiana. Average transit time from Baton Rouge is 3 days to Florida, 4 days to South Carolina, and 7 days to Georgia, including weekends. From Baytown to Florida, it is 5 days, to North Carolina 6 days, to South Carolina 11 days. (Average transit time not given to Arkansas and Louisiana.)	Bowman, Johnson, and Roadway.
14. (574) Mill points of shipper	See shipper under Georgia heading.			
15. (618) Southern Wipers, Inc., Charlotte, N.C. Wiping Rags	From Charlotte, to points in Mississippi, Arkansas, Texas, Louisiana, and Kansas. Monthly shipments range between [illegible] and 50,000 pounds.	Bowman, Ryder, ET & WNC, Rail	Needs faster service. Wants second-day service to points in Mississippi, and Louisiana, and third-morning to Texas points.	Bowman and Johnson.
16. (632) Landis, N.C.	See shipper under South Carolina heading			
17. (644) W. T. Grant Company, New York, N. Y. General commodities.	From shipper's consolidated center at Charlotte, N. C., and from points in North and South Carolina, Georgia, Virginia, Maryland and Tennessee, to points in Arkansas, Kansas, Louisiana, Mississippi, Missouri and Texas. About 1,600 pounds moves a month from Charlotte to each of the destination States involved, and about 450,000 pounds moves annually from Charlotte to Texas points alone. From the Carolinas collectively about 2,500 pounds moves to Texas monthly. From Georgia, about 5,000 pounds moves to Texas monthly. From Virginia, about 2,000 pounds moves to Texas monthly. From Maryland and Tennessee, collectively, about 1,500 pounds moves to Texas monthly. About 1,000 pounds a month from above origins collectively and about 1,500 pounds from Charlotte a month moves to the other destination States collectively.	Bowman, Johnson, New Dixie, Georgia Highway, A.C.M.E., Lone Star, ET&WNC, Southwestern, Strickland, East Texas, Gillette	Wants second-morning service from Charlotte to involved destination States and faster transit time from and to other involved points. Average transit time to Texas points is 7 days, including weekends, from Charlotte, and 5.6 days to Arkansas points from Charlotte, including weekends (Average transit time from and to other points not given.)	Bowman and Johnson. Transit study includes all shipments during period covered.

Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
18. (656) A.H.L. Corp., Charlotte, N.C. Cleaning compounds.	From Charlotte to points in Mississippi, Louisiana, and Texas. Weekly shipments range between 1,000 and 2,000 pounds.	Bowman interlining with unnamed connecting carriers.	Prefers single-line service. Wants 3-day service. Presently allowing a week lead time.	Bowman and Johnson.
19. (667) Display Fixtures Co., Novo Stand Fixtures Co., Charlotte, N.C. Fixtures for display of merchandise	From Charlotte to points in Texas. Monthly shipments range between 10,000 and 12,000 pounds.	Johnson, Thurston, East Texas, Bowman, Ryder, ET&WNC, Akers, Red Ball, Strickland, Southern, Roadway.	Prefers single-line service. Wants between 2- and 3-day service.	Bowman and Johnson. Specific complaint made against Roadway.
20. (668) North Carolina Display Fixtures, Cleveland, Ohio. Fixtures for retail stores and greeting cards.	From shipper's plant at Forest City, N.C., to points in Mississippi, Louisiana, and Texas. Shipments range between 57 and 3,986 pounds.	F & W, Consolidated, West, East Texas, Johnson, Thurston, Akers, Central, McLean, Hardee, SWT, Deaton, McFee, Red Ball, Strickland, Campbell, GALA, Mercury, Lee Way, Ryder, Bowman, Dixie, E.T.N.P.	Joint-line service inadequate. Presently allowing 7-days lead time.	Bowman and Johnson. Shipper states that Roadway is authorized to serve the origin and destination point but will not accept LTL shipments. No other specific complain.
21. (795) Hayes Floral Supply Manufacturing Company, Gastonia, N. C. Straw wreath forms.	From Gastonia to points in Mississippi, Texas, Arkansas, and Louisiana. Over a 6-month period it shipped about 50 LTL shipments to the above points. Average weight of each was 400 pounds.		Wants faster pickup service and faster transit time.	Bowman and Johnson. No indication that existing service is inadequate.
22. (855) Textiles, Inc., Threads, Inc., Gastonia, N.C. Thread and yarn.	From Gastonia to Dallas, Waco, El Paso, San Antonio, and Del Rio, Tex., Kansas City, Mo., and Meridian and Tupelo, Miss. Made in excess of 100 shipments to the above points during November 1966. Weight range from minimum to over 4,000 pounds. Average 1,000 pounds. This is only 50 percent of traffic moving to above areas.	Thurston, Bowman, Roadway, ET&WNC, Carolina, ETNF, Strickland, Bassa, T.I.M.E., Central, West, Campbell, Akers, Deaton.	Wants single-line service because it is more dependable. Allows lead time of 4 to 6 days to Mississippi and Louisiana points and 8 to 9 days to Texas points. Wants 3 to 4-day service to Texas points.	Johnson and Bowman. Akers offers joint-line service to many points in Louisiana and Texas.
23. (863) Nagle Products, Inc., Newark, N. J. Ironing board pads.	From shipper's Huntersville and Cornelius, N. C. plants to points in Texas. Made 86 shipments to various points in Texas during August 1966. Average weight was 250 pounds.	Johnson, Republic, Fredericksen, ETNF, Valley, Red Ball, Central, Strickland.	Feels transit time can be improved. Needs more equipment. Wants 2-day service to Dallas and Houston, Tex.	Bowman and Johnson. Bowman and Johnson can presently serve shipper in joint-line service over the Memphis, Tenn., gateway. Shipper did not make any specific complaints.
24. (926) P. Lorillard Co., Inc., New York, N. Y. Tobacco items	From shipper's Greensboro, N.C., and Louisville, Ky., plants to Shreveport and New Orleans, La., Little Rock, Ark., Kansas City, Mo., and Houston and Dallas, Tex. For a 6-month period in 1966 shipper moved in excess of 3 million pounds to the involved territory.	Mason & Dixon, ITOFCA, Bowman, Johnson, Roadway, Youngblood.	Wants single-line service. Wants 2-day service to involved points. Needs to end pilferage problem.	Bowman, Johnson and Roadway. Shipper states that service at present is satisfactory but that it would prefer single-line service to avoid theft and pilferage.
25. (929) Westinghouse Electric Corporation, Raleigh, N.C. Electric Motors	From Raleigh to points in Texas, Louisiana, and Mississippi. From 8/8/66 to 7/29/66 shipper had in excess of 125 shipments to points in the above territory. Average weight about 900 pounds.	Thurston, N.C. Motors, Dixie, G.F.A., Mervin, ETNF, Couch, Strickland, McLean, SWT, T.I.M.E.	Wants better transit time.	Johnson, Bowman.
		OKLAHOMA		
1. (217) Oklahoma City and Tulsa, Okla.	See shipper under Texas heading.			
2. (452) Oklahoma City, Tulsa, and stores located in Oklahoma	See shipper under Texas heading.			
3. (541) Spiro, Stigler, and Wartville, Oklahoma	See shipper under Arkansas heading.			
4. (734) James, Inc., Oklahoma City, Oklahoma Automotive parts	From Oklahoma City to Atlanta, Ga., commercial area (about twice a week, totaling 3,000 to 5,000 pounds). From Atlanta to Oklahoma City (250 to 300 pounds shipments about twice a month). From Oklahoma City to Texarkana (3 or 4 times a month each shipment weighs 70 to 300 pounds), El Dorado (same as Texarkana) and Magnolia, Ark. (ships once a month, each shipment weighing 100 to 300 pounds). Also, occasionally ships to Birmingham, Ala.	T.I.M.E., Transcon, REA.	Wants a faster single-line service. Average transit time 5 days including weekends. Wants second-day service to Atlanta and Birmingham	Jones, T.I.M.E. and Transcon offer single-line service to Atlanta but shipper states that their transit time is too slow.

Summary of evidence of supporting shippers—Continued

OKLAHOMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
5. (760) Tom P. McDermott, Tulsa, Okla. Inbound—rubber. Outbound—tires	From Gadsden, Ala. to Tulsa. Receives 3,000 pounds a week from Gadsden. Outbound from Tulsa to El Dorado and Texarkana, Ark., shipper moves 900 to 400 pounds about three times a month	SO and JT are used inbound and ABF outbound.	Wants direct service from Gadsden. Wants second-morning service from Birmingham to Tulsa and second-morning service to El Dorado and Texarkana, Ark. from Tulsa	Jones. Transcon can serve Tulsa directly from Birmingham
6. (761) Gardner Van Company, Tulsa, Okla. Receives hotel and restaurant supplies and equipment	From points in Southeastern States to Tulsa. LTL shipments weighing 400 to 500 pounds four to five times a month	T.I.M.E., Central, Brassell, Jones, Roadway.	Wants faster service. Has difficulty in tracing shipments in existing joint-line service.	Jones. Their supporting Jones from Atlanta to Tulsa
7. (762) Ganley Corp., Tulsa, Okla. Fiberglass pipe and fittings	From Tulsa to Bartow, Fla., through Atlanta. Ships 24,000 pounds in LTL lots a month. Each shipment weigh 400 to 800 pounds.	Transcon, T.I.M.E. interlining with Central, Tealsel, and Bowman. Also, Jones Roadway interlining with Ryder.	Shipments sometimes do not arrive together. Currently has tracing problems because of interlining. Wants 2-day service from Tulsa to Atlanta. Presently allowing 10 days lead time from Tulsa to Bartow, Fla. Wants four to five day service to Florida (including interchange).	Jones. Roadway's and Ryder's service is satisfactory. Jones will still have to interline at Atlanta. Can presently use a two-line service by going through Birmingham. Can presently use Jones to Memphis and Ryder to Bartow. Jones, Transcon and T.I.M.E. offer single-line service to points in Alabama and Georgia.
8. (763) Metalines, Inc., Oklahoma City, Okla. Aluminum structural forms	From Oklahoma City to points in Alabama and Georgia. Ships LTL lots in excess of 10,800 pounds a month. Expected to ship 15,000 to 20,000 pounds a month in 1967.	Transcon, T.I.M.E., Jones.	Needs fast delivery to construction job sites. Even though T.I.M.E. has single-line authority it still interlines. Wants 2-day service to Birmingham and Atlanta (service allowing three to four days less time.	
9. (765) C.R.C. Cross International, Tulsa, Okla. Pipeline equipment	From Tulsa to the gateways of Atlanta, Ga., and Birmingham, Ala. Ships 5,000 pounds a month to Atlanta and Birmingham as gateways. Expected a 40 percent increase in business in 1967.	T.I.M.E., Transcon.	Wants faster transit time. Wants proposed 2-day service into Atlanta and 2-day service to Birmingham and to points on U. S. Highway 82, in Arkansas.	Jones. Shipper supports Jones so it can have single-line service to Atlanta and Birmingham but it already has such service available.
10. (766) Grigsby Carpet Co., Tulsa, Okla. Receives bolts of carpets.	From Dalton, Ga., to Tulsa. Receives 10,000 to 15,000 pounds a month.	Transcon, T.I.M.E., Roadway, Jones, Georgia Highway Express to Atlanta.	Wants faster service because of customer demands and loss of sales due to slow delivery. Wants proposed 2-day service from Atlanta.	Jones. Jones could not serve Dalton directly (if authority was granted. It would interline at Atlanta.
11. (767) Laminates United, Inc., Tulsa, Okla. Building materials	From the gateways of Birmingham, Ala., and Atlanta, Ga., to points in Oklahoma and Arkansas. Receives about 4,000 pounds a month from the gateway of Atlanta and 5,000 pounds a month from the gateway of Birmingham.	ETAMC, Western, Transcon, Jones.	Present service too slow and too much damage. Wants 2-day service from Atlanta to Tulsa and 3-day service from Birmingham.	Jones. T.I.M.E. and Transcon offer single-line service from Atlanta to Tulsa (main receiving point). Several carriers have single-line service available.
12. (768) Nelson Furniture Company, Muskogee, Okla. Carpets and furniture	From the area of Atlanta, Ga. and Birmingham, Ala. (as gateways) to Muskogee. Receiving about 150 shipments a year. No weight figures given.	RFA, Frisco, Santa Fe, Western, Rocket, Jones, T.I.M.E., Cordens, Georgia Highway, Roadway, B & P Motor, Assoc. Trans., T. & P., Thurston, West, Transcon, Terminal, Mkt, Dixie Ohio, Yellow Transit and E.T.M.F.	Needs a carrier with single-line service to give faster deliveries. Average transit time four to seven days including weekends.	Jones. Proposed service is still joint-line. From some points Jones can offer a two-line service presently.
13. (769) Bert's Window Screen Company, Muskogee, Okla. Receives aluminum products	From Birmingham, Ala., to Muskogee. Receives about two LTL shipments a month weighing about 800 pounds.	ETAMC to Jones at Dallas, Tex. Cordens to Memphis, Tenn. to Jones.	Needs single-line service to better transit time and to lessen damage to product. Keeps a small inventory. Average transit time on three bills of lading was 5.3 days to Muskogee. Wants 3-day service to Muskogee.	Jones.
14. (768) Gibson Products Company, Oklahoma City, Okla. Receives clothing and shoes	From Georgia, Alabama and North Carolina to Oklahoma City. Receives over 300,000 pounds LTL and 175,000 pounds TL from the above States in a year.	Transcon T.I.M.E., Jones interlining with ETAMC.	Existing service too slow in transit. Needs rapid tracing. Has had some claim trouble with Ryder. Average transit time about 5 days, including weekends. Wants single-line service to cut 1 day off of transit time.	Jones. T.I.M.E. and Transcon offer single-line service to Atlanta
15. (770) Universal Distributors, Tulsa, Okla. Receives carpet	From Calhoun, Ga. to Tulsa. Receives one shipment every 2 weeks weighing between 350 and 600 pounds.	T.I.M.E., Transcon, Jones, and Bowman.	Wants faster service out of Calhoun so as to compete with service from Dallas. Under Jones' proposal shipper would get two to three day service. Currently receiving two to three day service. Also wants second-morning service from Atlanta.	Jones. Jones and Bowman offer joint-line service out of Calhoun now.
16. (771) Fashion Carpets, Inc., Tulsa, Okla. Receives carpet rolls	From Dalton, Ga. to Tulsa. Receives eight to ten rolls a month from Georgia. [illegible] and 600 pounds.	T.I.M.E., Transcon, RFA, Georgia Highway.	Shipper claims to have excessive delays with present [illegible] Jones' proposed 2-day service from Atlanta.	Jones. T.I.M.E. and Transcon offer [illegible] service from Atlanta. Jones interlining with Bowman can offer a joint-line service from Atlanta.

Summary of evidence of supporting shippers—Continued

OKLAHOMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
17. (783) Tulsa Trim Supply, Tulsa, Okla. Carpets and plastic seat covers	From Dalton and Columbus, Ga. to Tulsa. Receives small LTL shipments once or twice a month.	T.I.M.E., Transcon, Jones.	Wants second-day delivery from Atlanta.	Jones. T.I.M.E. and Transcon offer single-line service from Atlanta. Shipper has found their services to be slow. Jones interlining with Bowman can perform the proposed service. Shipper has not made any complaints about existing service to Jones.
18. (785) Aluminum Window Products, Tulsa, Okla. Receives aluminum	From Birmingham, Ala., Newman and Moultrie, Ga. to Tulsa. Receives 15,000 to 20,000 pounds a month, mostly from Birmingham.	T.I.M.E., Transcon, Campbell, ETWC.	Wants second-morning service out of Atlanta and Birmingham.	Jones. Transcon and Campbell offer single-line Birmingham. Two-line service is available from Moultrie.
19. (789) Robertson Factories SW, Inc., Oklahoma City, Okla. Outbound-drapes. Inbound-piece goods.	From Oklahoma City to points in Alabama and Georgia and the Carolinas. From Atlanta, Ga., to Oklahoma City. Ships about 5,000 pounds a month to Atlanta and 100,000 pounds to the Carolinas.	T.I.M.E., Transcon, Jones, Thurston, Gillette, Helms, Bixie, ETWMC, Muckabee, S&W, Overnite, McLean, Bowman, Hennis.	Present service is slow. Wants two-day service from Atlanta to Oklahoma. Shipper's transit time study shows that the averaged elapsed time in the listed shipments from Atlanta to Oklahoma City is 4.8 days and from the Carolinas it is 7.8 days.	Jones. T.I.M.E. and Transcon offer single-line service to Atlanta.
20. (790) Simco Awning Company, Muskogee, Okla. Receives screen, iron and ornamental components.	From Birmingham, Ala. to Muskogee. Receives one shipment a month weighing from 150 to 400 pounds.	Transcon, Cole, Jones.	Needs better service. Too much delay causes loss of customers. Present service takes one week to ten days, wants faster deliveries. Wants second-morning service from Birmingham and Atlanta.	Jones. Jones proposes second-morning delivery to complaints regarding existing service.
21. (806) Bert Parkhurst and Company, Tulsa, Okla. Receives tubing, pipe and expanded metals.	From Birmingham, Ala. and Atlanta, Ga. to Tulsa. Receives 100 to 150 shipments a month from Atlanta. Average weight 150 pounds. Receives six shipments a month from Birmingham. Average weight 5,000 to 10,000 pounds.	Transcon, T.I.M.E., Gordons, Jones, Campbell.	Wants quicker deliveries. Wants second-morning delivery out of Atlanta and Birmingham to Tulsa.	Jones. Transcon and T.I.M.E. offer single-line service from Atlanta. Campbell offers single-line service out of Birmingham.
22. (815) Stilwell Canning Company, Stilwell, Okla. Canned and frozen foods	From shipper's facilities at Stilwell and Van Buren, Ark. to southern points through Atlanta, Ga. and Birmingham, Ala. gateways. Almost 350,000 pounds shipped in 1965 to Atlanta and Birmingham.	Uses own refrigerated equipment	Wants single-line service for frozen foods. Wants 2-day service between Birmingham and Atlanta on the one hand, and Stilwell, Okla., Van Buren, Fort Smith, Ark., on the other.	Jones. Requires refrigerated equipment.
23. (824) Raymong Furniture Company, Muskogee, Okla. Receives furniture	From Atlanta, Ga. and points in Virginia, North and South Carolina to Muskogee (using Atlanta and Birmingham as gateways). Receives about 25,000 pounds a year from Atlanta, Ga. Receives daily shipments of about 500 pounds from other points.	T.I.M.E., Transcon, Rocket, Yellow	Wants single-line service to cut damages and speed up deliveries. Average transit time 6 days including weekends. Wants 2-day service from Atlanta and Birmingham which would enable it to have three or four day delivery from the Carolinas.	Jones. Jones is authorized to serve Muskogee directly from Memphis gateway.
24. (826) M & M Equipment Company, Tulsa, Okla. Outbound-power mowers and saws. Inbound-nylon cord and chains.	From Whitesburg, Ga. to Tulsa. (Atlanta gateway). Receives two shipments a year, each weighing about 800 pounds. From Atlanta, Ga. to Tulsa, one to four shipments a month each weighing about 40 pounds (only for 6 months a year). From Tulsa, Okla. to points in Arkansas. (No volume figures presented.)	T.I.M.E., Transcon, Jones.	Needs faster transit time because it cannot afford to inventory its parts. Wants second-morning service out of Atlanta and second-morning service from Tulsa to points in Ark.	Jones. Shipper has never used Jones with an interlining carrier to points in Arkansas. T.I.M.E. and Transcon offer single-line service from Atlanta.
25. (827) Harding Kindall Glass Company, Fayetteville, Ark. and Tulsa, Okla. Aluminum doors and tubing, and glass doors.	From Atlanta and Newman, Ga. (Atlanta gateway) to shipper's stores at Tulsa and Fayetteville. From Atlanta receives one shipment every two weeks at each destination. Average weight 300 to 400 pounds. From Newman receives one shipment every three weeks at each destination. Average weight is 700 to 800 pounds.	T.I.M.E., Jones.	Present service is slow. Wants second-morning service from Atlanta to Tulsa and Fayetteville.	Jones. T.I.M.E. offers single-line service from Atlanta.

Summary of evidence of supporting shippers—Continued

OKLAHOMA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
26. (#28) C. P. Anthony Company, Oklahoma City, Okla. Department store items	From points in Alabama, Georgia, North Carolina, and South Carolina, to points in Arkansas, Mississippi, New Mexico, Oklahoma, and Texas. Company receives at its warehouse in Oklahoma City between 500 and 1,500 pounds weekly from Atlanta, Ga., and about 50,000 pounds annually from other Georgia points. It receives between 4,000 and 5,000 pounds a year at its Oklahoma City warehouse from Birmingham, Ala. and about 12,000 pounds annually from other Alabama points. It receives about 100,000 pounds collectively from the Carolinas at its warehouse. Shipments over 100 pounds generally move directly to the stores located in Oklahoma and the stores in other destination States receives several shipments weekly from points in the origin States.	Ryder, Powell, Atlas, Alabama Central, T.I.M.E., Southwestern, Murdock, Gordons, Roadway, Sunset, Red Ball, Red Arrow, Overnite, Transcon, Riney, ET&WNC, Braswell, East Texas, Tamiami, S&W, Georgia Highway, Catawba, Mercury, Jones, Davis, Cherokee, Hall, Thurston, Western, Watson-Wilson, Yellow Transit.	Too many time delays and unpaid claims. Average transit time 7 days including weekends, except 2.8 days from Atlanta to Tulsa. Wants second-morning delivery from Atlanta to Oklahoma City, overnight service from Atlanta to points in Mississippi, and second-day service from Atlanta and Birmingham.	Strickland and Jones. It appears from the exhibits that present service is adequate. Present delivery time averages about 2.8 days.
27. (#31) Henderson Coffee Corporation, Muskogee, Okla. Foodstuffs	From Atlanta, Ga. to Muskogee. Receives about 250 to 3,000 pounds LTL monthly.	Gillette, Jones, Bowman.	Wants 2-day service from Atlanta. Average time from Atlanta to Memphis is 1.7 days. Average time to Muskogee was about 5 days, including weekends. Wants 2-day service from Atlanta to Muskogee.	Jones. Witness admitted present service is adequate.
28. (#45) Quark Nurseries Company, Tahlequah, Okla. Horticulture products	From Tahlequah to points in the southeast through gateways of Atlanta, Ga. and Birmingham, Ala. One-third of the traffic is TL with the remainder being LTL. From 1/8/66 to 6/19/66 shipper had 16 shipments to the southeast moving through Memphis. During 1966 shipper moved about 400,000 pounds to eight destinations. Shipper also receives inbound about 10,000 pounds LTL lots of certain nursery products from the Carolinas and Alabama.	Jones, Ryder, Overnite, Thurston, ET&WNC, ATAK, Hejaz, Gordons, Bowman.	Too much damage to plants in joint-line service. Horticultural products need special handling. Wants 2-day service to Atlanta and Birmingham with traffic handled via Memphis gateway. Shipper receives 8.4-day service to the Carolinas, 6-day service (including weekends) to Florence, Ala., and 7-day service (including weekends) to Florida.	Jones.
29. (#48) Roto Swing Door Company, Oklahoma City, Okla. Aluminum doors and frames	From Oklahoma City, Okla. to Atlanta, Ga. and Birmingham, Ala. Receives aluminum from Newnan, Ga. through Atlanta. Averaging about 1 shipment a week (600 to 700 pounds). About eight shipments a month moving to Atlanta. Each shipment weighing about 1,500 pounds.	Transcon, Jones, Pike, T.I.M.E., Frank.	Wants single-line service from Atlanta for speedier deliveries. Shipper has had difficulty in tracing shipments. Average transit time 9.5 days excluding weekends. Wants 2-day service from Atlanta.	Jones. Shipper can use Bowman and Jones interlining at Memphis, Tenn. Jones offers 2-day delivery from Memphis which is the same as its proposed service from Atlanta.
30. (#49) Rothchild's, Inc., Oklahoma City, Okla. Receives clothing	From Atlanta, Ga. as a gateway to Oklahoma City. Receives in excess of 3,500 pounds a month, from Georgia and North and South Carolina.	Hidesouth, Gillette, Bowman, Transcon, Roadway, Pilot, Barnes, T.I.M.E., TCT, Overnite, Johnson.	Shipper wants quicker service. Wants 2-day service from Atlanta to Oklahoma City. Generally shipper receives 3.9 day service excluding weekends from Atlanta to Oklahoma City. Roadway has handled shipper's traffic from the Carolinas to Oklahoma City in 2.9 days (excluding weekends).	Jones. Jones offers 2-day service to Oklahoma City from Memphis.
31. (#52) Bryan Infants Wear, Inc., Tulsa, Okla. Receives piece goods	From Atlanta, Ga. (gateway) to Tulsa. LTL shipments three to five a month weighing 250 to 300 pounds.	Roadway, Transcon, Strickland, Chief.	Wants more consistent service. Wants second-day service out of Birmingham and Atlanta.	Jones. Shipper states that existing service is occasionally poor. Shipper generally does not control routing. Shipper is unaware of several single-line services which offer service from the Carolinas.
32. (#54) Bunte Candy Company, Inc., Oklahoma City, Okla. Candy	From Oklahoma City to Birmingham, Ala., Atlanta, Ga., points on Arkansas Highway #7, and points in Texas. During a 1-year period it shipped $11,000 worth of candy to Georgia and $9e,000 worth of candy to Alabama. Expects to ship 1,000 pounds a week to Texas.	Transcon, Jones.	Needs faster transit service. Wants second-day service from Oklahoma City to Sulphur Spring, Greenville, Paris, Texas and other points in Arkansas.	Jones. Transit time is important because candy is perishable. Only 35 percent of candies require refrigerated equipment, but each order will contain some of the items that do require refrigeration.

Summary of evidence of supporting shippers—Continued

PENNSYLVANIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (676) Phillips Van Heusen Corp., Pottsville, Pa. Clothing and tailoring	From shipper's distribution centers at Chattanooga, Tenn., and Pottsville, Pa., to points in Arkansas, Mississippi, Missouri, Kansas, Louisiana, Texas. About 72 million pounds move unequally.	Merchants, Campbell, CTAWC, Bowman, Gordons, Byars, Acme, T.I.M.E., Jones, Interstate, Lone Star, Red Ball, East Texas, West.	Joint-line service inadequate. Wants overnight service to Arkansas, and second-morning to other points. Presently allowing between 4 and 5 days lead time.	Bowman, Johnson.
2. (871) Pennsylvania Dutch Company, Mt. Holly Springs, Pa. Candy and food items.	Inbound, from Dallas (1,600 pounds a month) and Farmersville, Tex. (7,000 pounds a month) to Mt. Holly Springs. Outbound, from Mt. Holly Springs to Dallas and Houston, Tex., Baton Rouge and Shreveport, La., and Jackson, Miss. Ships about 5,000 pounds a month to above points. Each shipment ranges from 200 to 2,000 pounds.	Johnson, Roadway, Mason-Dixon.	Present service is too slow. Allows 7 days lead time to Dallas and Houston and 14 to 21 days to outlying Texas points.	Johnson. Johnson can interline at New Orleans with several carriers who can deliver to the involved points. Johnson's proposed inbound service would be a [illegible] haul.
3. (874) McNeil Laboratories, Inc., Ft. Washington, Pa. Sugar, starch, plastic, and glass bottles	Outbound, it ships from Ft. Washington to points in Texas, Mississippi, and Louisiana. During November 1966, shipped about 17,000 pounds (LTL) to points in the above States.	Akers, Johnson, T.I.M.E., ETMF, Strickland, Transamerica, Consolidated, UPS.	Wants faster direct service. Eliminate tracing problems.	Bowman, Johnson. Shipper generally states that service is inconsistent. Ryder can serve some points in Louisiana, Mississippi, and Texas directly from Ft. Washington.
4. (877) Kerr Motor Freight Lines, Lewistown, Pa. Motor common carrier	Wants to interchange Texas, Louisiana, and Mississippi traffic with Johnson at Harrisburg, Pa.	Interchanges with Acme at Harrisburg and Philadelphia, also, with Roadway.	Wants to interchange on traffic moving to and from points south.	Johnson.
5. (886) Allis Chalmers Company, Pittsburgh, Pa. Electrical transformers	From Pittsburgh and Gadsden, Ala., to points in Arkansas, Louisiana, Mississippi, Missouri, Texas, and Kansas. During 1966, it shipped 279 shipments from Pittsburgh consisting of 11,065 units, and a total weight of almost 6 million pounds. Shipped 221 shipments from Gadsden consisting of 2,080 units, and a total weight of 1.7 million pounds.	B & O Express, McCombs, Bowman, Roadway, Superior, West, Campbell, Deaton, Gordons, Mercury, Western, ETMF.	Too much damage in transit. Wants faster transit time. Wants overnight service from Gadsden to Memphis gateway with next morning service to Mississippi, second-morning service to Louisiana and Arkansas, and second or third-day service to Texas, Kansas, and Missouri. (Average time in transit not given for specific points, and no transit figures are given for Pittsburgh.)	Bowman. Bowman only proposes to serve Gadsden. Superior can serve most of the points involved. There are a large number of irregular-route heavy haulers who can handle the involved commodities. Shipper also supported Roadway. Shipper has available to it the services of several regular route carriers. Shipper could not point out specific complaints. Open top equipment is required.
6. (891) Dennis Mitchell Industries, Inc., Philadelphia, Pa. Carts	From Philadelphia to points in Texas, Louisiana, Mississippi, and Arkansas. For a 7-month period in 1966 shipper transported 13 LTL shipments to Texas and 7 to Mississippi. Average weight 350 pounds.	Freight forwarders.	Shipper wants consistent pick-ups and faster deliveries than it is currently getting from freight forwarders. Wants 4-day service to Mississippi, Louisiana, and Arkansas.	Bowman, Johnson. Shipper has no specific complaints except excessive transit time and there is no evidence submitted to document poor transit time. Bowman and Johnson can serve shipper by interlining at Memphis and Mobile. Consolidated offers single-line service to Texas points. Johnson. Consolidated has single-line service to Houston and Dallas. Also Transon, Mason and Dixon can serve many points involved, directly. It appears that many carriers including Johnson can serve the involved territory directly. Shipper set forth no examples of delayed shipments. Johnson.
7. (896) Congoleum Nairn, Inc., Kearney, N. J. Wall and floor coverings	From shipper's Marcus Hook, Pa., plant to points in Louisiana, Mississippi, and Texas. Shipper moves about 10,000 to 15,000 pounds a day to the destination territory. Weight range is from 200 to 6,000 pounds (LTL).	Sealand, Strickland, Roadway, Johnson, Harris, Transcon, Mason.	Wants faster transit time.	
8. (913) Max Eckardt & Sons, Inc., Div. of Phillips Electronics, Inc., Emigsville (York), Pa. Christmas ornaments	From shipper's York, Pa., plant to points in Mississippi, Louisiana, and Texas. Ships about 75,000 pounds LTL to points in Mississippi, 150,000 pounds a year to points in Louisiana, and ships 1.1 million pounds to points in Texas. Receives about 1.8 million pounds a year from the involved territory. Shipments range from 200 - 800 pounds LTL.	Time, Acme, Yellow, Akers, Mercury, Interstate, Consolidated, Ryder, Harris.	Wants the services of a carrier who will leave trailers at its facilities and pick up the trailer when it is loaded. Wants single-line service. Shipper has had difficulty in obtaining pickup service from Roadway.	
9. (917) McCrory Corporation, York, Pa. Department store goods	From York, Pa., to points in Mississippi, Louisiana, and Texas. Also from points in Massachusetts, Connecticut, New Jersey, New York, North Carolina, South Carolina, Pennsylvania, Rhode Island and Virginia to shipper's stores in the above-named destination States. From September 1966 through November 1966 shipper transported in excess of 750 shipments weighing from 100 to 2,000 pounds average. All LTL to points in the involved territory.	Bowman, Johnson, T.I.M.E., Leeway, Universal, Acme, ETMF, Alterman, Gordons, Transcon, Ryder, Strickland, Republic, Hemingway, Mason, Spector, PIE, West, Central, Ark. West, National, Wager, etc.	Wants more consistent transit time. Shipper's transit time study indicates that on shipments to its store at Jackson, Mississippi, from Georgia, Massachusetts, New York, New Jersey, North Carolina, Pennsylvania, South Carolina it received generally 8-day service. To its Texas stores from Georgia, North and South Carolina and the middle Atlantic States it received, on the average, between 7.9 and 12.2-day service. And, to its Louisiana stores it receives, on the average, between 8 and 10.5-day service.	Bowman, Johnson. Shipper has the services of a number of carriers available to it plus a large fleet of private equipment.

Summary of evidence of supporting shippers—Continued

RHODE ISLAND

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
(866) Tupperware Company, Woonsocket, R.I. Plastic bowls and dishes.	From Woonsocket, R.I., to points in Texas. In 1965 almost 1 million pounds were shipped to Texas. Ships about once a week, 3,000 to 4,000 pounds [illegible]	Acme, Universal, Johnson, East Texas, Lone Star, [illegible] Brink, and Ryder.	Shipper has been using a freight forwarder since it has no direct service to most points in Texas. Allows 7 to 8 days transit time.	Johnson. Consolidated has single-line service to several points in Texas. Johnson interlines with East Texas at Atlanta offers single-line service. Johnson, Roadway. Shipper gives no specific complaints about existing service. It has not used Johnson to points where they have single-line service. Shipper has not used the services of a few carriers who can transport goods in a two-line haul.
(867) Collyer Insulated Wire Company, Lincoln, R.I. Wire coils, copper, lead, and aluminum. (926) Warren and Kenyon, R.I.	From Lincoln, R.I., to points in Louisiana, and Mississippi. During 1966 shipper transported about 1.5 million pounds (LTL) to points in Louisiana; 600,000 pounds to points in Mississippi, and 600,000 pounds to points in Texas. See shipper under Massachusetts heading.	Roadway, Johnson, Norwalk, Yellow, National, Universal, Spector, East Texas, and rail.	Wants single-line service. Roadway could not provide pickup service at times.	Roadway, Johnson. Shipper now has single-line service to all points to which it is supporting Johnson.

SOUTH CAROLINA

(33) Deering Milliken, Inc., Spartanburg, S.C. Outbound-textiles and textiles products. Inbound-raw materials.	Inbound mostly LTL shipments of raw materials move from points in Texas, Mississippi, and Louisiana to shipper's 29 plants located at numerous points in South Carolina. Approximately 75,000 pounds is shipped inbound each month with the average shipment weighing 1,200 pounds. Outbound shipments from the consolidating points via, Greenville or Spartanburg, S.C., to specified points in Texas and Louisiana collectively weigh 250,000 pounds a month. Of this amount approximately 100,000 pounds moves to Dallas, Tex., approximately 50,000 pounds moves to Houston, Tex., and approximately 30,000 pounds moves to Fort Worth, Tex. Shipper also has 115,000 pounds of outbound movements to specified points in Mississippi each month. Ninety percent of the movements are LTL. Between 50,000 and 100,000 pounds a month moves to points in Arkansas. Approximately 30,000 pounds moves each month to Kansas City. And, shipper has traffic moving to points in Oklahoma. Shipper routes between 75 and 80 percent of its outbound shipments.	Roadway is used to points in Texas. Ryder is used to points in Mississippi and Texas and Baton Rouge, La. Mennis handles shippers Kansas City traffic. Also, Watson - Wilson handles the Kansas City traffic in single-line service. Johnson is used to New Orleans.	Shipper's product is susceptible to considerable damage if handled excessively. It indicates that it must consolidate its freight from its various plants at warehouses in Greenville and Spartanburg and then deliver these shipments to the Roadway's dock. Limited shipper dock space also is a reason for consolidation. Shipper has experienced problems in receiving service to off-route points in Texas, particularly with Roadway. Shipper prefers single-line service from Greenville. It receives two or three complaints a month regarding Roadway's transit time to Dallas.	Floyd & Beasley, Johnson, Bowman, and Jones Shipper moves its traffic from the South Carolina plants to the two consolidating points in the equipment of a carrier it owns. It is satisfied with Ryder's service to points in Texas and Mississippi. Shipper indicated that the service it receives to Kansas City and points in Arkansas is generally satisfactory. Roadway had a three-line haul restriction to points in Texas, and Ryder will not serve many of the points in Mississippi on a three-line haul. In this regard it is noted that sometimes the carrier shipper owns is a participating carrier. Even if the Jones application is granted, it would have to interline to serve points in Arkansas. Shipper indicated that it had no real complaint on Oklahoma traffic. Watson-Wilson's service to Kansas City is described as satisfactory. Shipper knows that there are several carriers operating from Greenville to Atlanta, and that a number of carriers operate from Atlanta to Dallas. Even if the applications are granted shipper will continue to use the carrier it owns to pick up shipments at its 29 plants and deliver them to carriers at Greenville.
[illegible] Division of Basic Manufacturing Company, West Minister, S.C. Blankets and bedspreads.	From Westminister to points throughout the United States shipper has 10 million pounds of traffic a year. Almost all of this traffic is LTL. During 1965 shipper had about 59,000 shipments averaging about 166 pounds each, and about 600 shipments TL averaging about 10,000 pounds each. Shipper regularly has traffic to specified points in Arkansas, Mississippi, Florida, Kansas (Kansas City and Topeka), Missouri, Alabama, Louisiana, and Texas. During August 1965, it had 38 shipments weighing 6,290 pounds to eight specified points in Arkansas; collectively 73 shipments weighing 9,155 pounds to Kansas City and Topeka, Kans.; 17 shipments weighing 2,575 pounds to 8 points in Louisiana, including one to Baton Rouge; 32 shipments weighing 3,430 pounds to 9 points in Mississippi; 48 shipments weighing 19,455 to Carthage, Kansas City and Springfield, Mo.; and 95 shipments weighing 26,183 pounds to 14 points in Texas.	Southeastern and Johnson originate traffic at shipper's plant and interlines with other carriers at Atlanta.	Ryder will not pickup shipper's traffic at Westminister. Shipper wants single-line service from Westminister to the points to which it ships.	Bowman, Johnson, and Floyd & Beasley. Shipper states that it has no direct, single-line motor carrier service available from Westminister to Louisiana and Texas points that Floyd & Beasley proposes to serve. It indicates that about 12 carriers hold authority to originate traffic at its plant and transport it to Atlanta. Shipper believes that only two carriers, viz, Transcon and East Texas hold authority from Atlanta to Dallas. Shipper concedes that to the points to which it ships it has single-line service from Atlanta.

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
3. (27) Duncan Motor Lines	This general commodity motor common carrier interlines with other carriers at Greenville, S.C. Under its certificate of Registration it serves approximately 100 South Carolina shippers which have traffic moving to specified points in Arkansas; to Kansas City and Topeka, Kans.; and to specified points in Louisiana, Mississippi, Missouri, and Texas. During 7/65 it interlined 8,720 pounds moving to points in Arkansas; 2,670 pounds moving to Kansas; 18,700 pounds to Louisiana; 38,240 pounds to Mississippi; 1,810 pounds to Missouri; and 31,815 pounds to Texas. Duncan routes approximately 50 percent of the freight it originates.	On shipments to the Southwest Duncan interlines with R.T.&W.N.C., Thurston, and Bowman. It has a concurrence with Roadway and also interlines with Johnson.	Duncan wants two-line service made available to its customers. Two-line service would also increase Duncan's revenue because it would not have to be divided among three carriers. Roadway does not accept certain types of freight from Duncan at Greenville.	Bowman, Johnson, and Jones. Duncan was not able to establish a concurrence with Ryder. However, Ryder, which has a terminal in Greenville, holds single-line authority between a number of points in South Carolina, Texas, Louisiana, and Mississippi. Bowman holds authority between Greenville and Atlanta, Ga. Johnson, which has a terminal in Greenville, can serve all of the points in South Carolina that Duncan serves. Bowman and Johnson by interlining with other carriers could render two-line serve to all the destination points Duncan named. If the Johnson and Bowman applications were granted they could offer South Carolina shippers single-line service to the destination territory. However, Duncan believes that its customers would still prefer that it originate their traffic and interline with these carriers. Roadway holds single-line service between Greenville, on the one hand, and, on the other, Kansas City and Topeka. Service to Little Rock, Ark. was described as satisfactory.
4. (28) Chemstrand Division of Monsanto Company, New York, N.Y. Synthetic fiber, synthetic staple fiber, synthetic fiber yarn, plastic resins, chemicals, nylon intermediates, and finished and unfinished fabrics.	(1) From Blacksburg and East Greenwood, S.C. to Anadarko, Okla. 2.5 million pounds moves annually. (2) From Blacksburg and East Greenwood to Brownsville, Tex. 100,000 pounds moves annually. (3) From Pensacola, Fla. to Greenville, Miss. 3.3 million pounds moves each year. (4) From Blacksburg, East Greenwood and Decatur, Ala. to Houston 75,000 pounds moves annually. (5) From Blacksburg, East Greenwood and Decatur to Laredo, Tex. 7 million pounds moves each year. (6) From Blacksburg, Greenwood, and Decatur to Terrell, Tex. 25,000 pounds moves annually. (A) From Pensacola, Fla. and Blacksburg and Greenwood to Bentonville and Rogers, Ark., 30,000 pounds moves annually. (B) From Pensacola, Blacksburg and Greenwood to Granada, Miss., 50,000 pounds will move annually. (C) From Pensacola, Blacksburg, and Greenwood to McComb, Miss., 25,000 pounds moves each year. (D) From Pensacola, Blacksburg and Greenwood to Rolling Fork, Miss., 35,000 pounds moves annually.	(1) New Dixie to Atlanta, Ga., Transcon to Oklahoma City, Okla. and Lee Way to destination. (2) Bowman to Birmingham, Mercury to Houston, Tex and Brown's to destination. (3) Mercury to Birmingham and Deaton to destination. (4) Bowman from the two South Carolina points to Birmingham and Mercury to destinations. Baggett from Decatur to Birmingham and Mercury to destination. (5) Bowman from the two South Carolina points to Birmingham, Mercury to Houston and Brown's to destination. Baggett from Decatur to Birmingham, Mercury to Houston and Brown's to destination. (6) From the two South Carolina points Bowman to Birmingham, Mercury to Dallas and Southern Plaza, to destination. From Decatur Baggett to Birmingham, Mercury to Dallas, and Southern Plaza to destination. (A) Bowman from Pensacola to Memphis and Jones to destination. New Dixie from two South Carolina points to Atlanta and T.I.M.E. to destination. (B) Bowman from Pensacola to Memphis and Rabel to Granada. New Dixie from the two South Carolina points to Atlanta and Deaton to Granada. (C) Mercury from Pensacola to Birmingham and Deaton to McComb. New Dixie or Overnight from two South Carolina points to Atlanta and Deaton to McComb. (D) Mercury	(1) Shipper wants 3-day two-line service, via, Johnson or Bowman to Dallas, Tex. and then Lee Way to destination. Although Roadway holds single-line authority from Blacksburg and East Greenwood and from Decatur, Ala. It indicated to shipper that it preferred not to handle shipper's outbound traffic. (2) Shipper wants three-line haul reduced to two-line; via, Johnson or Bowman to Houston and Brown's to destination and it wants 4-day service. (3) Shipper wants 1-day single-line service from Bowman. (4) Shipper wants 3-day direct single-line service of Bowman or Johnson from South Carolina points and Bowman from Decatur. (5) Shipper wants 4-day two-line service of Johnson or Bowman from South Carolina to Houston and Brown to destination. It wants Bowman from Decatur to Houston and Brown's to destination. (6) Shipper wants 4-day two-line haul of Bowman or Johnson to Dallas and Southern to destination. (A) Shipper wants Bowman to handle this traffic to Springfield, Mo. where a connecting carrier will interline. It feels that this way the originating carrier can control the traffic for all but 107 miles of the movement. (B) Shipper wants Bowman to originate this traffic and interline it at Winona, Miss. It believes that since Bowman would handle the traffic for all but 25 miles of the movement it would receive prompt delivery. (C) Shipper wants Johnson or Bowman to originate this traffic and interline at Jackson, Miss. with a connecting carrier. Originating carrier would handle traffic for all but 65 miles of the movement and influence the prompt delivery by the connecting carrier. (D) Shipper wants Bowman to transport the traffic to Greenville, Miss. for interline. Johnson would also originate the South Carolina traffic and interline at Jackson.	Bowman, Johnson, and Jones. Ryder has single-line service from pertinent origins to Houston but does not wish to handle shipper's traffic. Deaton has authority to serve shipper's Decatur plant on specified commodities to points in Louisiana and Mississippi. Their service in volume moves is described as satisfactory. ETHMC provides single-line service between Blacksburg and East Greenwood, on the one hand, and, on the other, Greenville, Miss. Campbell requested that shipper not use it on interline at Birmingham and it has filed tariff exception. Bowman does not seek authority to serve Winona, Miss. with respect to part (B)

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
e. (29)—Con.		from Pensacola to Birmingham and Deaton to Rolling Rock. New Dixie or Overnight from the two South Carolina points to Atlanta and Deaton to destination.		
5. (64) Jantzen Southern Co., Seneca, S.C. Clothing	From Seneca shipper has LTL movements to Beaumont, Dallas, Fort Worth, Houston, Orange, and Texas City, Tex., and Baton Rouge, Lake Charles, Monroe, and Shreveport, La. Annually between 150,000 and 200,000 pounds collectively moves to the above described points. Shipper also has about 50,000 pounds moving annually to the Kansas points Bowman seeks to serve about the same volume to named Missouri points, and about 40,000 pounds to named Arkansas points annually. Additionally shipper has traffic moving to named Mississippi points.	Ryder and P.I.E.A. Ryder has been used on 50 percent of this traffic. The remainder is originated by Huckabee which interlines with East Texas at Atlanta. Shipper believes that it used McLean-on-an interline basis to points in Kansas and Missouri. Ryder is used to Arkansas and Mississippi. Shipper also uses parcel post.	Shipper wants second morning service to the Louisiana points and third-morning service to the Texas, Kansas, Missouri and Arkansas points. Consistency of service is important because shipper's customers rely on delivery within a certain time. Shipper had received complaints with respect to Ryder's service and commenced using the Huckabee and East Texas interline service. It would prefer to use a short-line carrier; G&P from Seneca to Greenville, S.C. for interline with long-haul carriers so as to avoid congestion at its loading docks.	Floyd & Beasley, Bowman, and Johnson. Roadway has refused to accept shipper's traffic which was originated by another carrier. Shipper indicated that Ryder, Bowman, and G&P hold authority to serve Seneca. It has used Akers's service and is satisfied with this carrier. However, it has not used Akers's joint-line service to the Southwest. While shipper has single line service available to a number of the destination points it uses joint-line service.
6. (76) Clearwater, S.C.	See shipper under Massachusetts heading.			
7. (78) Jeffrey Manufacturing Co., Delta, Ohio. Steel and conveyors.	Inbound shipper receives steel from Birmingham, Ala., Pittsburg, Pa., Sparrows Point, Md., Ohio, and Chicago, Ill. Outbound each month shipper has movements to El Dorado and Little Rock, Ark. (two or three shipments to Arkansas points weighing a total of between 2,000 and 3,000 pounds); Kansas City and Topeka, Kans. (one or two shipments a month weighing a total of 1,000 pounds); Baton Rouge and Lake Charles, La. (two or three shipments weighing a total of between 2,000 and 3,000 pounds), Columbus, Jackson, Meridian, Pascagoula, and Vicksburg, Miss. (two or three shipments weighing between 2,000 and 3,000 pounds); Kansas City, Mo., Beaumont, Dallas, Fort Worth, and Port Arthur, Tex. (25 or 30 shipments weighing a total of between 25,000 and 50,000 pounds). The average shipment weighs approximately 1,000 pounds.	Bowman and Johnson are used on inbound and outbound shipments. ET&WNC is used on shipments to Arkansas. G&P interlining with Watson-Wilson are used to Kansas and Missouri. Johnson or Ryder is used to Louisiana. Bowman or Ryder is used to Mississippi. Ryder in single-line service or Overnight interlining with Transcon is used to Beaumont. Roadway is used to Dallas. Overnight interlining with Transcon is used to Fort Worth. Roadway or Ryder is used to Houston and to Port Arthur.	Shipper wants 3-day service to Arkansas, Kansas, Missouri, and Texas. Two- or 3-day service is requested to Louisiana and Mississippi. Roadway is not authorized to pickup at shipper's plant. This carrier has a restriction to two-line hauls in the involved area. Ryder renders a daily pickup service to shipper but it was unable to load two shipments in two separate days and had to return the following day and make the pickup. Shipper prefers single-line service.	Bowman and Johnson. Shipper has not used the services of Bowman and Johnson and describes them as satisfactory. It indicates that the routing to Kansas City and Topeka is satisfactory and that Johnson's service to Louisiana is satisfactory.
8. (79) Sacco-Lowell Shops Division of Rexnord Corporation, Easley, S.C., Outbound-textile machinery. Inbound-rubber washers.	Outbound shipper has movements from Easley to such points as Brenham, West, Sherman, New Braunfels, Laredo and Brownsville, Tex. Inbound shipments move from Meridian, Miss. to Easley. About 10,000 pounds moves inbound annually in LTL service approximately once every 2 weeks. Approximately 150,000 pounds will move to the Texas points annually. The outbound shipments are generally TL lots weighing between 15,000 and 35,000 pounds each. Some of shipper's traffic moves through Laredo to points in Mexico.	Outbound Thurston interling with Missouri Pacific Truck Lines is used. Also, Ryder and ET&WNC have been used.	Shipper wants 3- or 4-day service to the Texas points.	Bowman and Johnson. Shipper has not had any complaints with respect to the existing service. Although Roadway solicited shipper's traffic it has never used this carrier's services.
9. (85) M.C.&D. Lines, Inc., Marteville, S.C.	MC&D holds authority to transport general commodities, with exceptions, (1) between points in Darlington County, S.C. and between points in this County and points in South Carolina, and (2) between points in Florence County, S.C. and between points in Florence County and points in South Carolina. As demonstrated by an exhibit, the traffic which MC&D originated for one of its shippers moved to specified points in Texas and Arkansas. It serves 29 mills located at 7 points in South Carolina. This traffic accounts for 75 percent of its business.	It interlines with Bowman and ET&WNC at Greenville, S.C.	Its interline with Bowman has been satisfactory. On the other hand its interline with ET&WNC has not been satisfactory. Ryder refuses to concur or interline. Roadway canceled its interline concurrence. Floyd & Beasley has refused to concur or interline. This carrier does not agree with the general opinion of shippers that single-line service is preferrable to joint-line service.	Bowman and Johnson. Bowman can serve the points in South Carolina this carrier serves in single-line service but it interlines with M.C.&D. Inasmuch as Floyd & Beasley competes with M.C.&D. at the South Carolina points it does not wish to interline with this carrier. Similarly Roadway has acquired authority to serve the South Carolina points and no longer wished to interline. Johnson also holds authority to serve all of the involved South Carolina points direct in single-line service.

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
10. (88) Her Majesty Underwear Company, Wauldin, S.C. Girls underwear and sleepwear	From Wauldin to Dallas, Fort Worth and Houston, Tex. the shipments, which are LTL and weigh an average of 225 pounds, move about twice a week to each of these.	Thurston originates the traffic and interlines it at Memphis, Tenn.	Shipper wants 4-day service or better to these Texas points. The single-line services of Roadway and Ryder are not used to the named Texas points because shipper was not satisfied with the service rendered by these carriers. The interline service rendered by Thurston since the beginning of 1964 is described as unsatisfactory.	Bowman and Johnson. Shipper uses the services of Johnson and describes this carrier as reliable. It has not used Bowman's service. Shipper has not tried Johnson to New Orleans and interlining there with connecting carriers to Texas because it does "not feel that it was fair to judge (Thurston's service/sic/) in such a short period of time."
11. (178) Starton Mills, Starton, S.C., Towels, dish cloths, table covers, napkins, and wash cloths	From Starton to Dallas, Houston, and Fort Worth, Tex. Shipments vary from LTL to TL. Between 70,000 and 90,000 pounds moves each month to Houston, with the average shipments weighing between 7,000 and 8,000 pounds. About 9,000 pounds moves monthly to Dallas.	Roadway in single-line service and rosenglood in interline service.	Shipper has received complaints regarding the transit times of Roadway and Ryder. Transit time is important to shipper. It allows 7 days for delivery to Dallas and Houston. Second or third delivery is preferred. Shipper wants single-line service because it wants to limit the amount of handling of the expensive and easily damaged cartons in which it ships its commodities.	Bowman and Johnson. Shipper has used Bowman's and Johnson's service and has found them to be satisfactory.
12. (207) International Paper Company, Mobile, Ala. Outbound - paper, paper articles, and wood pulp. Inbound - machinery, parts thereof, resins, oilings, and other materials and supplies.	From its Georgetown, S.C. plant shipper moved, in 1965, a total of 536,000 pounds to Jackson, Miss., Shreveport, Bastrop and Springhill, La., and Dallas, Fort Worth, and Houston, Tex. (2) From its Mobile, Ala. plant in 1964 shipper moved 1.3 million pounds to points in Texas including Houston, (345,000 pounds) Fort Worth, (414,600 pounds), Beaumont (589,400 pounds), Dallas (520,800), and 69,000 pounds to Baton Rouge, La. (3) From its Moss Point, Miss. plant during this same period it shipped 625,400 pounds to Houston, 89,800 pounds to Dallas and 146,200 pounds to Fort Worth (4) From its Bastrop plant it shipped a total of 9.7 million pounds to Atlanta, Ga.; Washington, D.C.; Baltimore, Md.; Philadelphia, Pa.; New York, N.Y.; Boston, Mass.; and unnamed California points. (5) In 1965 from its Springhill plant it shipped a total of 9.7 million pounds to Atlanta, Ga., Washington, D.C.; Baltimore; Philadelphia; New York; Boston; and unnamed California points. (6) From its Camden, Ark. plant in 1965 it shipped 30,000 pounds to Camden, Ala., 36,000 pounds to East Pepperell, Mass.; 40,400 pounds to Burlington, N.J.; 100,400 pounds to Camden, N.J.; 64,000 pounds to Suncook, Ala.; 106,000 pounds to Everett, Mass.; 178,000 pounds to Bayonne, N.J.; 36,000 pounds to Lodi, N.J.; 64,000 pounds to Statesville, N.C.; 38,000 pounds to Marcus Hook, Pa.; and 32,000 pounds to Charleston, S.C. (7) Also, from Camden it shipped 74 tons to Statesville, N.C.; 68 tons to Winston-Salem, N.C.; 15 tons to Philadelphia, Pa.; and 18 tons to Presque, Maine and (8) From its Pine Bluff plant in 1965 it snipped 17 tons to Augusta, Ga.; 45 tons to Holmdel, N.J.; 30 tons to Eddystone, Pa.; 137 tons to Philadelphia; 468 tons to Atlanta, Ga.; 4o tons to Raleigh, N.C.; 12 tons to Covington, Ga.; 29 tons to Charleston, S.C.; and 99 tons to Cartersville, Ga. This traffic moved in TL and LTL shipments.	Johnson and Bowman have a trailer pool at Georgetown. Shipper used this also from Mobile. Above is used from Georgetown. From Mobile to Texas, Mercury, Red Ball and West to Houston and Beaumont are used. West has a trailer pool at Mobile. From Moss Point shipper uses Johnson, West, Red Ball, Wilkenson, and Mercury to Dallas, Fort Worth, Houston, and Beaumont in joint- and single-line service. From Bastrop Red Ball is used. Except for the Camden plants, Red Ball serves all shipper's plants in Arkansas, Mississippi, and Louisiana. From Camden ANF, Southeastern, Marvin and Atlas are used. From Pine Bluff ANF, Superior, Southeastern and Atlas are used. From Pine Bluff ANF, Superior, Southeastern and Red Ball are used from Pine Bluff, Ark.	Shipper has experienced delays with traffic which is interlined and is getting equipment to Moss Point. At Bastrop shipper once could not obtain enough trailers from Red Ball. The transit times shipper is receiving on traffic from Springhill is not consistent. Shipper does not have single-line service from the Camden plant to the territory Bowman serves and to some of the territory Johnson serves. It is using TOFC from Springhill to New York because it cannot obtain the transit time it requires from motor carriers. No more than 3-day service is expected in traffic from Springhill to New York, N. Y. and Philadelphia, Pa. Exhibits were introduced to show transit times. The first covered nine shipments to Bastrop between March 26 and May 29, 1964. Only the transit times to interline points with Red Ball are given. One shipment from South Carolina was in transit for 7 days to Shreveport; two from New Jersey involved 11 and 14 days to New Orleans and Baton Rouge, respectively, three from Massachusetts, two in 6 days and one in 9 days to Memphis, two from Pennsylvania in 5 and 11 days to Memphis and Jackson, respectively, and one from Georgia in 14 days to Baton Rouge. The second exhibit covers 18 shipments handled between March 31 and May 29, 1965. The shipments moved to Pine Bluff, Ark., from points in North and South Carolina, Georgia, Massachusetts, and Pennsylvania. Transit times sought between 4 and 13 days.	Bowman and Johnson. Bowman and Johnson will pickup shipments after 4:00 p.m. Bowman and Johnson proposes to establish terminals at Monroe, La. and shipper will have to have a connecting carrier (shipper named Red Ball) originate the shipment at Bastrop and interline it at Monroe. Similarly a connecting carrier again shipper named Red Ball will have to move Springhill interlining with Bowman and Johnson at Shreveport. Red Ball serves all of shipper's involved plants direct except the one located at Camden. Shipper indicates that it receives reasonably satisfactory service from Red Ball. Shipper was aware that presently Bowman could interline with Red Ball at Memphis, Tenn. in traffic to and from Bastrop or Springhill.

Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
13. (210) Texize Chemicals, Inc., Greenville, S.C. Cleaning and buffing compounds, waxes, detergents, and sizing compounds.	From Greenville during the first 2 weeks in 7/66 shipper had LTL and TL movements to Dallas (68,946 pounds), Fort Worth (1,011 pounds), Houston (25,665 pounds), Beaumont (1,487 pounds), and San Antonio, Tex. (38,192 pounds). It also ships to other points in Texas such as El Paso, Palestine, Garland, Irving, and Waco. Shipper anticipates a 30 percent annual increase in sales. Shipper's commodities must be kept from freezing. About 90 percent of the above-described tonnage to Dallas was handled in private carriage. Common carriers are used on LTL and overflow TL traffic.	TOFC, private carriage, Ryder, Thurston, and Johnson. Ryder renders single-line service from Greenville to Dallas, Houston, Fort Worth, and Beaumont. Johnson is used to originate Greenville traffic.	Shipper wants second or third morning service on both LTL and TL traffic from Greenville to Dallas, Fort Worth, Houston, and Beaumont. It indicates that Roadway will not accept its traffic after the first frost since it is marked "Keep from Freezing". Shipper has received complaints on the interline service of Johnson and Thurston to Texas.	Bowman and Johnson. Shipments to San Antonio, El Paso, Palestine, and Waco would be interlined by applicants. Akers' service has been reasonably satisfactory.
14. (290) M. Lowenstein and Sons, Inc., New York, N.Y.	Ships cotton from points throughout Southeast to Anderson, S.C. Ships greige cloth from Anderson, to Rockhill and Lyman, S.C. Ships finished cloth from Rockhill and Lyman to points in Louisiana, Mississippi, and Texas. Ships fiberglass from Anderson, to points in Louisiana, Mississippi, and Texas.	Shipper operates the Catawba Trucking Company, which is authorized to operate in S.C. Shipments outside S.C. are interlined with Ryder, Roadway, and Johnston.	Business expansion desires the 2-day service proposed by Johnson.	Johnson.
15. (331) The Kendall Company, Bethune, S.C. Surgical dressings and related products, textiles.	From Bethune shipments move to numerous specified points in Texas.	Shipper's primary origin carriers are Thurston Motor Lines, Overnight Transportation, and Standard. Connecting carriers are Transcon Central, Merchants, East Texas, Gordons, Herrin, T.I.M.E., Roadway, and Ryder. Private carriage. Shipments to some Texas points currently move in three- and four-line hauls	Desires single-line service, particularly to Dallas, to order to avoid delays on shipments to department stores. Transit study shows one shipment to Dallas handled by Overnight-Transcon took 25 days; most shipments take 3 to 5 days. Delivery to smaller Texas points takes 7 to 13 days.	Bowman and Johnson.
16. (424) Campus Sweater and Sportswear Co., Cleveland, Ohio Wearing apparel	From shipper's plant at Chester, S.C. to points in Texas. Monthly shipments range between 38 and 2,891 pounds.	Johnson, Roadway, Lone Star, Overnite, East Texas, REA, Southeastern, National, Standard, Ryder, Delta, Transcon, Deaton, and Viking	Prefers single-line service. Delay in pickups.	Bowman, Johnson. Except for Roadway, no specific complaints.
17. (460) Yorke Shirt Corporation, Belton, S.C. Shirts	From Belton between January and June 1966 shipper has 96 shipments with 1 movement to Texarkana, Ark.; 1 to Kansas City, Kans.; 3 to Jackson, Miss.; 17 collectively to Lake Charles, New Orleans, Ruston, Shreveport, and Baton Rouge, La.; and 74 collectively to Beaumont, Port Arthur, Baytown, Fort Worth, Dallas, and Houston, Tex.	Bowman in conjunction with connecting lines is used primarily. Ryder, Johnson, and Roadway are also used.	Shipper asserts that it has been unable to develop its business in the Southwest because of the lack of single line service to points in this area. Shipper allows between 7 and 10 days for delivery to the Southwest. It needs 3- or 4-day service. Ryder has refused to originate traffic at Belton unless the shipment weighs over 1,000 pounds. It refused to accept shippers traffic in the fall of 1965, and it has requested shipper to originate its traffic with another carrier for interline with Ryder at Greenville, S.C.	Bowman and Johnson.
18. (574) Mill Points	See shipper under Georgia heading.			
19. (599) Orangeburg, S.C.	See shipper under Louisiana heading.			
20. (629) Jantzen Southern, Inc., Seneca, S.C. Clothing	From Seneca to Jackson, Miss., Baton Rouge, La. and points in Texas, and Arkansas. About 5 million pounds moves annually.	Ryder, Huckabee, East Texas.	Joint-line service inadequate wants 3-day service to points in Arkansas, Louisiana, Mississippi, and Texas.	Bowman. Johnson.

Summary of evidence of supporting shippers—Continued:

SOUTH CAROLINA—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
21. (833) Stayon Products, Inc., Easley, S.C. and Landis, N.C. Children's clothing.	From Easley and Landis to points in Texas, Louisiana, and Missouri. Monthly shipments range between 1,000 and 5,000 pounds.	Bowman, REA, Ryder.	Joint-line service inadequate.	Bowman, Johnson.
22. (797) Raybestos Manhattan, Inc., North Charleston, S.C. Asbestos cloth, yarn, tape, and rubber products.	From Charleston to Little Rock, Ark. (500 pounds a month), Baton Rouge (800 pounds a month) and Shreveport, La. (600 pounds a month); Columbus and Jackson, Miss. (40,000 pounds a month), Kansas City, Mo.; Kansas City, Kans. (2,000 pounds a month) and Dallas, Fort Worth, and Houston, Tex. (8,000 pounds a month). All shipments are LTL.	Joint-line services of Roadway - ABF, Johnson - Sale, Johnson - T&P, Roadway - Robinson, and Southern - Dixie. Single-line services of Roadway and Watson-Wilson.	Prefers single-line service. Too many tracing problems in joint-line service. Wants 2- or 3-day service to all destinations.	Bowman and Johnson.
23. (780) Blair Mills, Inc., Belton, S.C. Towels and wash cloths	From Belton to points in Mississippi, Louisiana, Missouri, Texas, and Arkansas. Shipped about 40,000 pounds to above States during a 7-month period in 1966 in TL and LTL lots.	Ryder, G&P, Hermis, REA, Overnite, Roadway, ETMY, and P&N.	Too much lag time between shipment and delivery. Allows 7 and 14 days lead time into involved territory and need at least 5-day service.	Bowman, Johnson. Shipper has rail service. Receiving good service from Bowman using Memphis as gateway. Has some single-line service presently available. Has numerous joint-line services available.
24. (883) The Pyle-National Company, Aiken, S.C. Lighting fixtures and equipment. 25. (894) The Pyle National Company.	From Aiken, S.C. to points in Mississippi Louisiana, Texas, Arkansas, and Missouri. Shipper transported in excess of 100 shipments to the destination points during the last quarter of 1966. Average weight was 500 pounds. Same as 883 above.	Southeastern, ETMY, Watson, Red Ball, Johnson, Bowman.	Wants direct single-line service for faster and more reliable delivery and to lessen damage. Allows 9 days for delivery.	Bowman. Shipper had no specific complaints with existing service.

TENNESSEE

1. (2a) Eureka Foundry of Chattanooga, Chattanooga, Tenn. Cast iron forgings.	From Chattanooga to Houston and Orange, Tex. Approximately 80 percent of shipper's traffic moving to points in Texas will move in TL lots with the remainder moving in LTL lots. The TL shipments will weigh between 27,500 and 40,000 pounds. The LTL shipments will weight between 1,000 and 5,000 pounds with the average shipment weighing about 500 pounds. Between 40,000 and 65,000 pounds would move to points in Texas each month. Approximately 25 percent would move to Houston and the remainder would move to Orange, Tex.	Baggett and Bowman originate this traffic. Shipper also uses Southern Railway. Robinson Freight Line also originates shipper's traffic.	Shipper prefers single-line service because faster service is provided and there is less chance losing the loose castings which make up a shipment. Also, shipper indicates that claims on multiple-line shipments are handled rather slowly.	Baggett. Shipper did not know of any single-line service from Chattanooga to the Texas points Baggett seeks to serve. It was not aware that Roadway, which has a terminal in Chattanooga, has a single-line service between Chattanooga and Houston. Shipper did not know of any claims with respect to its traffic moving to Houston or Orange. It has not investigated whether Ryder offers single-line service from Chattanooga to Houston and Orange.
2. (12b) Memphis, Tenn.	See shipper under Georgia heading.			
3. (13a) Cumberland Cane Company, Chattanooga, Tenn. Wood and steel canes and poultry equipment.	From Chattanooga to points in Louisiana, Texas, and Arkansas. Between 6/1/65 and 7/5/66 shipper had movements to New Orleans, Lake Charles, Shreveport, La.; Kansas City, Kans., Dallas, Houston, and Texarkana, Tex.; Kansas City, Mo.; and Little Rock, Ark. The shipments weighed a total of about 500,000 pounds. Shipper moves about 500,000 pounds annually to Mississippi points.	During the aforementioned period Ryder was used on shipments to New Orleans and Shreveport; Central was used to Lake Charles, New Orleans, Dallas, and Houston; T.I.M.E. to Kansas City; Roadway to Dallas and Houston; ET&WNC to Houston, Texarkana, and Little Rock; Bowman to Dallas, Texarkana, and Houston; Watson-Wilson to Kansas City, Mo.; Baggett to Lake Charles; and Southern to New Orleans and Houston. Shipper also uses private carriage on this traffic but would like to discontinue its use to the involve destination territory.	Shipper expresses a need for consistent overnight service to points within 400 miles of Chattanooga, and second-day service to Dallas and Houston. It is not satisfied with Ryder's service to New Orleans on export shipments because on two such shipments in the year before the hearing, Ryder, although allowed 4 to 5 days, was unable to deliver the shipments before the boat sailed from New Orleans. Shipper indicates that the existing service is unsatisfactory. It has difficulty in obtaining pickup service from Roadway and Ryder. Also, shipper has experienced difficulty in tracing. Ryder has informed shipper that it does not want to handle shipper's TL traffic.	Bowman. Shipper has used Bowman and found its service satisfactory.

Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
(138) Dixie Lighting Tool Company, Chattanooga, Tenn., lighting tools and parts thereof	From Chattanooga during 1965 and the first 6 months of 1966 shipper had movements to Kansas City and Springfield, Mo., Houston, Marshall, Dallas, Fort Worth, Beaumont, Longview, Texarkana, and Orange, Tex., New Orleans, Baton Rouge, Monroe, Lake Charles, Shreveport, West Monroe, and Ruston, La., Greenwood, Jackson, Columbus, Meridian, Hattiesburg, Greenville, Vicksburg, and Pascagoula, Miss., Prescott, Pine Bluff, Little Rock, Texarkana, Camden, El Dorado, Jonesboro, Texarkana, West Memphis, Ark., and Mobile, Ala. It had 103 shipments to Texas during this period weighing a total of about 100,000 pounds, 107 shipments to Arkansas weighing a total of about 90,000 pounds, 164 shipments to Mississippi weighing a total of about 75,000 pounds, 2 shipments to Mobile, Ala., weighing a total of about 1,000 pounds, 1 to Kentucky weighing 450 pounds, 4 to Missouri weighing about 25,000 pounds, 235 to Louisiana weighing about 130,000 pounds, and 4 to Kansas City, Kans., weighing about 100 pounds	Service Lines, Southern Pacific Railroad, Southern Railroad, Bowman, Ryder, Greyhound, Rea, Roadway, ETAWMC, REA, Hoover, T.I.M.E., Watson-Wilson, Mason & Dixon, Central	Shipper's loading facilities are limited to "at dock" with the rubber of motor carriers that serve it. It has received complaints from customers in Mississippi and Louisiana relating to slow delivery. It has not received complaints about Bowman but it has received complaints about the connecting carriers. Shipper wants second-morning service to points in Mississippi, Arkansas, Louisiana, and third-day service to points in Texas and Missouri.	Bowman: motor presently handles shipper's traffic from Chattanooga to Memphis. It does not participate in the Kansas City traffic. Bowman chooses the connecting carrier.
(139) Chattanooga Glass Company, Inc., Chattanooga, Tenn., bottles, glass ware, and wood-en drink cases	From Chattanooga to points in Mississippi, Louisiana, Texas, and Missouri. All of shipper's traffic moves in TL lots weighing 30,000 pounds. Between January and June 1966, shipper had traffic moving by motor common carriers from Chattanooga to Greenwood, Laurel, and Meridian, Miss.; Terrichana, Tex.; and Kansas City and Springfield, Mo. Between January and 7/7/66, it had shipments by private carriage to Camden, El Dorado, Little Rock, and Jonesboro, Ark.; Topeka, Kans., Baton Rouge, Lake Charles, Monroe, and New Orleans, La.; Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, and Vicksburg, Miss., and Beaumont and Houston, Tex.	Private equipment ETAWMC is used to Little Rock and Greenwood and originates the traffic to Springfield, interlining with James Central originates the [illegible] and interlines with West Plains Service Lines interlining with Tombstone handles the Kansas City traffic. ETAWMC and Service Lines interlining with James and Prince handle the Springfield traffic. Also, Time Superior renders single-line service to this point. Roadway, interlining with Central handles the Louisiana traffic. Private carriage is used to points where shipper has available only two-line service. It is used to return pallets and broken glass to Chattanooga.	Shipper's customers request overnight service. It indicates that it is not unusual for one of its customers to call at 1 p.m. and request delivery of as many as five TL of bottles the next morning. Although Ryder has used in the 6 months before the hearing, shipper indicates that this carrier wants only TL lots moving to the North. ETAWMC renders good service but occasionally it does not have equipment available. T.I.M.E. has not always been able to furnish equipment. Shipper's New Orleans customer informed it did not want Baggett to deliver and that if the traffic was not handled in private carriage, shipper would lose the business	Bowman: Shipper receives excellent service from Bowman to points it can serve. Many of shipper's customers demand that shipments be handled in private carriage. It does not [illegible] City except that 1 day is lost in interlining. Mr. complains about Roadway's service were voiced: even if shipper had single-line service it will use some private carriage because it wants to return pallets and broken glass used in its manufacturing process. Those customers which insist on private carriage are located at New Orleans, Baton Rouge, Lake Charles, and Hattiesburg
(140) Mitchell Industrial Tire Company, Inc., Chattanooga, Tenn., industrial tires out-bound. Rims move inbound	Outbound from Chattanooga between [illegible] and 7/1/66 shipments moved to Texarkana, Houston, Dallas, Fort Worth, South Houston, and Longview, Tex.; Pine Bluff and Texarkana, Ark.; Vicksburg, Pascagoula, Meridian, Jackson, Columbus and Greenwood, Miss.; Springfield, Mo., and New Orleans, Shreveport, and Baton Rouge, La., and Indianapolis, Ind. Inbound to Chattanooga between 12/22/65 and 7/1/66 nine shipments moved, collectively, from Dallas and Houston, Tex.; Pine Bluff, Ark., and Meridian, Miss.	Bowman is used on shipments to Texarkana, Texarkana, Houston, Dallas, Fort Worth, Jackson, Shreveport, South Houston, and Greenwood. Roadway is used to Houston, Dallas, and Fort Worth. ETAWMC is used to Pine Bluff. Robinson is used to Houston, Jackson, Meridian, New Orleans, Columbus, and Long view. Central is used to Dallas. Ryder handles traffic to Vicksburg, New Orleans, Shreveport, Houston, Dallas, South Houston, Fort Worth, and Baton Rouge. Service Lines is used on shipments to Springfield. Greyhound is used to Shreveport. And Mason & Dixon is used to Indianapolis. Inbound to Chattanooga Ryder is used from Houston, East Texas interlining at Memphis with Robinson or ETAWMC is used from Dallas and Houston, Viking interlining with TCT at Nashville is used from Meridian, SWT interlining with ETAWMC is used from Pine Bluff, TTTO interlining with ETAWMC at Memphis is used from Houston, TC interlining with ETAWMC at Memphis is also used from Houston, and Viking interlining with TCT at Nashville from Meridian	Time in transit is important because shippers customers cannot stock industrial tires because they do not take the special equipment to mount them. When a customer requires a replacement, he must wait until shipper mounts the tire and ships it. The replaced rim is then forwarded to Chattanooga for return to the customer. Dealers located at Lafayette, Springfield, and Baton Rouge have complained about time in transit. Shipper indicates that it has had difficulty in obtaining pick ups from Ryder, Roadway, and Central. It calls its order in at 12 p.m. but has to wait until the following day to obtain a pickup. Shipper wants 3-day service to Mississippi, Arkansas, and Louisiana, and 4-day service to Missouri and Texas. Shipper introduced an exhibit showing transit times on nine inbound shipments from points in Texas, Mississippi, and Arkansas. Shipper was not satisfied with the 4- to 6-day service on the shipments listed which represent from 10 to 15 percent of its inbound traffic during the study period	Bowman: Shipper indicates that the inbound shipments are not as important as the outbound and that it does not route the inbound shipments

Summary of evidence of supporting shippers—Continued

[illegible]—Continued

Shipper, Location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
7. (198) The Chattanooga Medicine Company and its divisions, Chattanooga, Tenn. Pharmaceutical drugs, patent medicines, fine chemicals, soaps, bleaching and cleaning creams	From Chattanooga during the first 6 months of 1966 shipments moved to Baton Rouge (45 shipments), Lake Charles (17), West Monroe (1), Monroe (99), Shreveport (66), New Orleans (84), and Ruston (2), La.; Pascagoula (7), Jackson (59), Laurel (22), Hattiesburg (13), Columbus (8), Vicksburg (14), Greenville (11), Greenwood (13), and Meridian (25), Miss. Shipper's traffic is seasonal. It ships more in the fall and early winter months, thus its annual volume moving to these points would be three times the number of shipments that would apply during a six month period. Shipper also has about one shipment a month moving to Kansas City and Topeka, Kans.; Carthage, Kansas City, and Springfield, Mo. Shipper has 700 customers in both of Louisiana and Mississippi.	Ryder and Jones are used to Baton Rouge, Lake Charles, New Orleans, and Houston. Robinson is used to Monroe and in a interline service to Shreveport. To Mississippi Bowman originates the traffic and interlines at Birmingham and Mobile, Ala., and Memphis, Tenn., with Hunt, Campbell, and Red Ball.	Shipper indicates that approximately 3 months before the hearing a representative of Ryder submitted to shipper a list of points the carrier did not want to serve in Mississippi and North and South Carolina. Fifty-three Mississippi points were listed. Shipper allows 5 days for delivery to Mississippi and it wants 3-day service. To Louisiana Ryder's service is described as slow. Shipper allows 7 days for delivery to New Orleans and 7 to 8 days to other Louisiana points. It wants 3-day service to New Orleans and not over 4-day service to other Louisiana points. Transit time is important because shipper's customers usually order only when they need the commodity. Shipper lost a Kansas City account because of poor transportation service rendered by T.I.M.E. Watson-Wilson is not used to Kansas City because it assertedly does not move the freight from Chattanooga sometimes for 7 to 10 days after making the pickup.	Bowman. Even if this application is granted, shipper would have to interline shipments to a vast majority of Mississippi points. Other than Ryder, shipper indicates that it does not have single-line service to points in Mississippi.
9. (209) Brock Candy Company, Chattanooga, Tenn. Candy	From Chattanooga during April 1966 shipper had movements to El Dorado, Jonesboro, Little Rock, Pine Bluff, Texarkana, and North Little Rock, Ark.; Baton Rouge, Lake Charles, Lockport, Monroe, New Orleans, Shreveport, and Ruston, La.; Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, and Vicksburg, Miss.; Fairmont, Dallas, Fort Worth, Greenville, Houston, and Port Arthur, Tex. The shipments weighed between 72 pounds and 18,948 pounds. There were about 150 shipments during this period. If it received adequate single-line service under Bowman's proposal, shipper indicates that its traffic would increase by 15 percent	Private carriage, Robinson, CT&MC, Ryder, Comtrol, Alterman, T.I.M.E., Bowman. Private carriage is used to Texas.	Shipper needs protective service in both the summer and winter. Since it is unable to obtain protective service, some products cannot be shipped during certain periods. It wants a single-line service. Transit time complaints have been received. Shipper does not have protective service to points in Mississippi, except that provided by Alterman once a week to Gulf Coast points. Ryder's service to Mississippi is not used because shipper believed that Ryder does not offer service to Mississippi. Roadway returned two shipments to Mississippi points which it indicated it does not serve.	Bowman. Bowman has been requested to provide protective service equipment on shipments to Mississippi but it did not provide this type of service.
9. (676) Pillsbury Co., Chattanooga, Tenn. Food products	From Chattanooga, Tenn., to points in Mississippi and Louisiana. Approximately 720 million pounds annually.	Bowman, Campbell, Ryder, Red Ball.	Joint-line service inadequate. Wants overnight and not later than second-day service.	Bowman. Shipper specifically complained about Ryder's service.
10. (676) Chattanooga, Tenn.	See shipper under Pennsylvania heading.			
11. (689) Memphis Furniture Manufacturing Co., Memphis, Tenn. Furniture	From Memphis, Tenn., to Mobile, Ala., and points in Georgia. Monthly TL and LTL shipments range between 100 and 10,000 pounds.	Ryder, Alabama-Highway, Cole, Bowman, Marvin	Unsatisfactory service from existing carriers. Wants 3-day service.	Marvin. Alabama-Highway presently serves shipper in single-line service from Memphis to Mobile. Drop-offs in transit are required.
12. (690) Marie Harman Cosmetics, Memphis, Tenn. Toilet preparations	From Memphis, Tenn., to Montgomery, Ala., and Columbus, Ga. About 200 pounds a shipment on an order basis.	Ryder, Bowman, Gordons, Marvin, Jack Cole, West	Needs faster service. Shipper was promised between 2- and 3-day service. Wants 1-day service. Presently allowing 3 to 5 days lead time.	Marvin. Bowman serves shipper in single line service to Columbus.
13. (718) Command Corporation, Memphis, Tenn. Sheaff, Tobacco, and Insecticides	From Memphis, Tenn., to Columbus, Ga. No figures cited as to frequency of traffic. Shipments weigh between 100 and 20,000 pounds. Most are LTL.	T.I.M.E., East Texas	Receives single-line service but use present service is too slow. Need overnight service to Columbus.	Marvin. No evidence that existing service is inadequate.
14. (801) White Stag Manufacturing Company, Murfreesboro, Tenn. Sports-wear	From Dallas, Tex., and Muskogee, Okla., to Murfreesboro, Tenn. Receives from above points between 500 and 2,000 pounds each day. From Murfreesboro to points in Texas (800 pounds a day), Louisiana (400 to 600 pounds a day), Mississippi (600 pounds a day), Arkansas (500 pounds a day), Kansas [illegible] (400 to 600 pounds a day).	Red Ball, T.I.M.E., Consolidated, Ryder, Southwestern, Pulaski	Some shipments have been refused because of late delivery. Wants faster single-line service. Average transit time of 6 days to Murfreesboro on light shipments.	Bowman. Transit time ranged from 5 to 14 days with SWT and Pulaski. Shipper has some single-line service available from Murfreesboro to [illegible] United States. Lost a $7,000,000 order because of slow delivery time. Can presently use Bowman in a joint-line service.

Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
15. (816) Cavalier Corporation, Chattanooga, Tenn. Soft-drink coolers	From Chattanooga, Tenn., to points in Texas. From 3/10/66 to 11/22/66 Cavalier shipped in excess of 75 shipments averaging about 2,000 pounds to points in Texas. During 1965 about 1.1 million pounds were shipped to points in Texas with about 500,000 pounds going to the East Texas area.	Bowman interlining with Red Ball, Central, Couch, ABF, ETMC. Also used Robinson as originating carrier.	Wants fast single-line service so as to keep up with a competitor which has such service available.	Bowman. Shipper has no specific complaints with existing service in many cases the shipper does not specify the carriers. Ryder offers single-line service to some points in Texas. Bowman. Delivery time is only critical in some cases. Shipper did not complain about existing service. It prefers single-line service.
16. (846) Crader Products, Inc., Chattanooga, Tenn. Wooden paint paddles and yardsticks	From Chattanooga, Tenn., to Houston and Dallas, Tex., New Orleans and Metairie, La., and Hattiesburg and Jackson, Miss. From 3/28/66 to 12/8/66 shipper transported 24 shipments to the above points. Average weight was about 100 pounds. Shipper states that the above figures represent about one third of the traffic moving to the above destinations. See shipper under Alabama heading.	Bowman, Robinson, REA Private Carriage.	Wants single-line service. Allows 3 days lead time and 4 days for manufacturing.	
17. (866) Memphis, Chattanooga, and Nashville, Tenn.				
		TEXAS		
1. (7) Visador Company, Jasper, Tex. Glazed wood products	From Jasper to specified points in Alabama, Georgia, Florida, and South Carolina. During February, March, and April 1966, shipper had 65 shipments totaling 15,962 pounds, with the average shipments weighing 246 pounds to points in the above-described States. During its busy season these shipments will increase by 20 percent. Shipper has branches at Atlanta, Ga., Fayetteville, N.C., and Dallas, Tex., among others.	Red Ball originates the traffic and interlines with East Texas, Cole-Dixie, Central, Bowman, [illegible], Overnight, Huber, and occasionally others.	Shipper wants single-line service because its commodities are easily damaged and interchange of the freight increases the risk of damage. Also, some of the present joint-line routings are circuitous. Although, even if granted the authority it seeks Red Ball could still not render single-line service to points in Florida, shipper believes that it could eliminate 2 days in transit.	Red Ball. Shipper handles the bulk of its freight, which is truckload, in its own equipment. It would tender Red Ball its LTL shipments. Of the shipments made during the study period, Red Ball, if it received the authority it seeks, would be able to handle those to Atlanta, Ga., Birmingham, Ala., and Greenville, S.C., in single-line service.
2. (75) Gulf Oil Corporation, Atlanta, Ga. Packaged petroleum products, tires, and tubes, and allied items	(a) From Port Arthur, Tex., to all points in Alabama and Georgia presently served, by Baggett. During March, April, and May of 1966, it shipped an average of 107,-58[illegible] pounds a month of packaged petroleum products by motor common carrier to Alabama and Georgia. Of this volume, 91 percent moved in TL and the balance in LTL. About three TL and five LTL shipments moved each month. The TL shipments averaged 32,490 pounds and the LTL shipments ranged from 500 to 3,700 pounds with the average being 2,018 pounds. Approximately 80 percent of this volume moves directly to shipper's customers and the balance moves to its bulk plants. In addition to this volume, shipper handles about one TL a month to each of its bulk plants in Alabama in its own equipment. (b) From Atlanta it ships empty shipping containers and collapsable pillow tanks to Port Arthur. The pillow tanks move in TL and LTL lots. (c) From Tuscaloosa, Ala., to its distribution center at Dallas, Tex., it ships 2[illegible],000 pounds of tires and tubes a month. Motor carrier service would be used to handle rush orders. See shipper under Massachusetts heading.	(a) From Port Arthur Herrin, Ryder, ETMC, Central, GFA, Mercury, Red Ball, Strickland, and connecting carriers are used. (b) From points in Alabama to Port Arthur it uses Baggett, Georgia Highway, and Ryder in connection with several carriers. (c) Rail service is used from Tuscaloosa to Dallas	Shipper wants second or third-morning delivery from Port Arthur to points in Alabama and Georgia. Shipper prefers single-line service. It indicates that it receives satisfactory service from some (unnamed) carriers it is using and unsatisfactory service from others (unnamed).	Baggett. Red Ball and Herrin offer single-line service from Port Arthur to Mobile, Ala., but will not handle shipper's traffic at the rate desired by it.
3. (76) Dallas, Tex.				
4. (90) Dallas, Tex.	See shipper under Georgia heading.			
5. (109) Houston, Tex.	See shipper under Louisiana heading.			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
6. (28) Simmons Company, Southern Division, Atlanta, Ga. Cotton piece goods	Inbound to its plant at Dallas, Tex., shipper has traffic moving from specified points in States located on the East Coast such as New Jersey, North and South Carolina, New Hampshire, New York, Pennsylvania, and Connecticut. Between 2/7/66 and 3/4/66 shipper received a total of 74,220 pounds of LTL shipments from points in these States. During the same period shipper received traffic from Passaic, South Round Brook, Mt. Holly, and Elizabeth, N.J.; Winston-Salem, Elkin, High Point, Concord, Kings Mountain, Roanoke Rapids, Hickory, Burlington, Conover, Norton, and Rockingham, N.C.; Orangeburg, Piedmont, Batesburg, Roebuck, Carlisle, Dunter, Walhalla, Starton, Lyman, McCall, and Travelers Rest, S.C.; Manchester, N.H.; Brooklyn, and Farmingdale, N.Y.; Philadelphia, Pa.; New Preston, Conn.; and Emporia, Va.	During the study period Roadway's single-line service was used to Dallas from specified points in New Jersey, North Carolina, and South Carolina. It was also used as the delivering carrier on interlined shipments from New Hampshire, New York, South Carolina, and Virginia. Other delivering carriers on interlined shipments include Gordons, Central, Tramcon, Strickland, East Texas, and Chief. During the study period Overnight, White, Mackubee, Duncun, and Watkins originated shipments at points in South Carolina; Law originated shipments at Manchester; Thurston originated North Carolina shipments; New Dixie originated South and North Carolina shipments; Ryder originated South Carolina shipments; Johnson originated shipments from South Carolina; Kaleels originated shipments from Connecticut; Interstate and Fillius originated shipments from New Jersey; Helms and Tennessee-Carolina originated shipments from North Carolina; Pinter originated a shipment at Farmingdale; and Old Dominion originated a shipment at Emporia. Single-line service was rendered by Strideland from Brooklyn and Philadelphia and by Consolidated from Philadelphia.	Shipper has experienced difficulties with time in transit and consistency. It introduced traffic studies of shipments delivered between February 7 and March 4, 1966. Transit times to Dallas are given on 66 shipments. Weekends are included in most of the computations. A total of 53 of the shipments originated in North and South Carolina. On a majority of those originating in North Carolina shipper received 6-day service or better and in a majority of those originating in South Carolina shipper received 7-day service or better. On shipments originating in New York it received 7-and 8-day service. On the one shipment from New Hampshire it received 6-day service; from Virginia it received 7-day service on one shipment; from Pennsylvania it received 6-, 7-, 10-and over 10-day service; and from New Jersey it received 6-, 10-, and over 10-day service.	Johnson and Norman. Of the 66 shipments for which transit times were given in the study, Roadway handled slightly over 40 in single-line service from New Jersey, and North and South Carolina. It rendered between 4-(not including weekends) and 10-(including weekends) day service. Its average transit time including weekends was about 6 days.
7. (202) Houston, Tex.	See shipper under Georgia heading.			
8. (213) Garland, Tex.	See shipper under Georgia heading.			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
9. (215) Lorch-Westway Corporation, Dallas, Tex. Piece goods.	Inbound to Dallas, shipments are received from specified points on the eastern seaboard with the majority of the freight moving from North and South Carolina. Shipments weigh from 100 to 2,500 pounds, and shipper receives about 10,000 pounds a month on the average.	Roadway is the primary single-line service utilized. Origin or intermediate carriers used are Ryder, Cole, Floyd & Beasley, and Thurston. Delivering carriers used are Central, East Texas, Herrin, Red Ball, Strickland, and Transcon.	Transit time and consistency of service are important in order for shipper to maintain an even flow of production in a highly competitive industry. The inbound shipments are used within a week after delivery. Shipper wants 3-day service, including weekends, in the inbound traffic to Dallas. It is open to receive freight on Saturday. A transit time study of all the shipments received at Dallas between January and October 1965 was introduced. It demonstrates that, including weekends, the majority of shipments from North and South Carolina were delivered in 6 or less days with the remainder involving transit times of between 7 and 10 days. On the majority of the listed shipments from the Middle Atlantic States shipper receives deliveries in 7 or less days including weekends. The majority of the shipments from Atlanta, Ga., were delivered in 5 or less days including weekends. And the majority of shipments from New England were delivered in 7 or less days including weekends. Shipper also introduced a list of shipments delivered during June and July 1966. It shows transit times similar to those discussed above. Shipper is not satisfied with the transit times.	Bowman and Johnson.
10. (216) Tensions of Texas, Inc., Dallas, Tex. Piece goods.	Inbound to Taylor, Tex., shipments are primarily from points in North and South Carolina and from other specified points on the eastern seaboard. Shipper receives at Taylor about 10,000 pounds a month from points in this origin territory.	The single-line service of Roadway has been used from the Carolinas and Strickland from New Jersey origins. The interline services of these two carriers. In addition to Ryder have also been used.	Shipper wants 3-day service excluding Sundays. Transit time is important because it is a factor in the time it takes to market shipper's commodity. Shipper also wants a consistent service so that it can schedule its production. It is not satisfied with the transit time of the existing carriers. A transit time study of 50 shipments delivered to Taylor between January and July 1966 was introduced. Transit times were given for 28 shipments. The computations include weekends. Some of the shipments listed compute only the transit time from an interline point, which will be indicated below in parenthesis. Three shipments from Virginia were delivered in 10, 8 (from Baltimore, Md.), and 6 (from Baltimore) days, respectively. Ten shipments were delivered from North Carolina in 11, 6, 7, 7, 6, 6, 7 (from Memphis, Tenn.), 6 (from Charlotte, N.C.), 8 (from Memphis) and 4 (from Memphis) days, respectively. Thirteen shipments were delivered from South Carolina in 7, 7, 7, 8, 6, 7, 7, 5, 6 (from Charlotte), 6 (from Greenville, S.C.), 10 (from Charlotte), 6 (from Memphis), and 4 (from Greenville) days, respectively.	Bowman and Johnson. If their applications are granted Bowman and Johnson would interline with Central at Dallas for delivery to Taylor.
11. (217) Bell Textile Company, Dallas, Tex. Textiles and fabric.	Inbound from specified points in North and South Carolina and from Griffin, Ga., shipments move to shipper's stores located at Dallas and Fort Worth, Tex.; Fort Smith, Ark.; and Oklahoma City and Tulsa, Okla. From Griffin shipper receives at its five stores collectively about 50,000 pounds a year. From the North and South Carolina points it receives collectively 50,000 pounds a year.	Ryder is used from Griffin to houston where it interlines with Red Arrow for delivery to Dallas. Ryder, Dixie, and Red Arrow are used from Tarboro, N.C., Overnight and Transcon from Cola, S.C. to Dallas, Transcon to Oklahoma City, Ryder interlining with Kentucky Lilette and Red Arrow to Fort Worth from Griffin, T.I.M.E. from Jamestown and Kannapolis, N.C., to Tulsa and Oklahoma City.	Shipper indicates that time in transit is important because of the seasonal nature of its business. It expresses a need for the proposed 3-day service of Bowman and Johnson from the Carolinas to Dallas and Fort Worth.	Bowman, Johnson, and Jones.

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
12. (221) Visor Company, Inc., Dallas, Tex. Household chemicals and detergents	From Dallas to specified points in Georgia and Alabama about 10 shipments move each month. The shipments weigh an average of 250 pounds. During July and August 1956 shipper had agreements to Savannah, Thomson, Summerville, and Atlanta, Ga., and Birmingham, Selma, and Butler, Ala. Shipper expects its volume to increase 25 percent annually.	Gordons and Jones originate shipments to Alabama and Georgia.	Shipper has experienced difficulty with the service of Gordons in that this carrier has been 2 or 3 days late in making pick ups.	Bowman, Jones, and Johnson. Shipper has satisfactorily used the service of Jones
13. (222) Southern Manufacturing Company, Dallas, Tex. Inbound—piece goods Outbound—clothing	Inbound shipper receives at Dallas shipments from Clearwater, S.C., Atlanta, Ga., and other points in the South. Shipments are received weekly and weigh between 100 and 10,000 pounds with the average shipment weighing about 525 pounds. Outbound shipments are made daily to points in the South such as Birmingham, Mobile, and Montgomery, Ala.; Columbus, and Atlanta, Ga.; and Jackson, Miss. The average outbound shipment weighs about 175 pounds.	Inbound, shipper uses Roadway, East Texas, and Gordons. Outbound, it uses Brownwell, East Texas, and Red Ball.	Shipper is not satisfied with the outbound service. It has received complaints and has had orders canceled because of delays. Shipper complains that Red Ball has not made pickups until between the day following the request to the morning of the third day. Consistent transit time is important on inbound shipments because shipper has to be able to schedule its manufacturing process. It cannot maintain a large inventory. Outbound transit time is also important.	Harris.
14. (223) Boyce, Dallas, Tex. Industrial and automotive rubber goods	Outbound from Dallas shipments are made on a weekly basis to Atlanta and Columbus, Ga.; Jackson, Miss.; Birmingham, Mobile, and Montgomery, Ala.; and other points in Mississippi, Alabama, and Georgia. The average shipment weighs 525 pounds. Inbound at Dallas shipments are received from Atlanta weekly.	On outbound shipments Mercury and Red Ball are used. On inbound shipments Transcon and Roadway are used.	Transit time is important because shipper's customers order parts when they are needed. They do not maintain large inventories. Shipper indicates that shipments are delayed when an interchange is involved.	Harris. Shipper has not had any complaints with respect to the service of Mercury and Red Ball.
15. (224) The Candy House, Morgenthaler, Tex. Candy	During April, May, and June 1956, shipper moved 101,487 pounds from Morgenthaler to Atlanta, Ga.; Birmingham, Ala.; Greenville, Miss.; and to other points in the territory involved which shipper expects to be interchanged at Atlanta, Ga. Shipper expects its volume of shipments to increase 20 percent annually. About 10 percent of the above-described tonnage was shipped to Atlanta, Birmingham, and Greenville. The remainder moved to points in Florida, and North and South Carolina through Atlanta.	Red Ball originates 99 percent of shipper's traffic and interlines with Roadway and East Texas. Central delivers the Florida shipments.	Consistency of service is important because shipper wants to be able to tell a distributor when the shipment will be delivered so the latter can plan his orders. Shipper indicates that complaints have been received on shipments moving to Greenville, Birmingham, and Atlanta. It could not cite any specifics.	Red Ball. The interline service of Red Ball and Roadway has been generally satisfactory but shipper prefers single-line service.
16. (225) Hartfield Press, Inc., Dallas, Tex. Printed matter	From Dallas shipper has weekly movements to Atlanta and Columbus, Ga.; Montgomery, Mobile, and Birmingham, Ala.; and Jackson, Miss. Shipments weigh between 100 and 20,000 pounds.	Transcon Lines and Brownell.	Transit time is important because shipper's customers place their orders when they need the material and some of the material, or, advertising matter, is dated and its delivery is scheduled. Shipper wants one carrier to handle as much as possible of its traffic. It complains that with Brownell it has experienced poor pickup service, slow delivery, and tracing problems. This carrier informed shipper that it did not wish to handle shipper's traffic to the Southeast.	Harris. Shipper is satisfied with the existing service to Birmingham and Atlanta but it believes that it could use additional service to these points.
17. (226) Brownell Paper Company, Dallas, Tex. Adding machine and teletype paper	From Dallas shipper moves about 3,500 pounds a month collectively to Atlanta, Ga.; Birmingham, Ala.; and Greenville, Miss. The average weight of each shipment is approximately 200 pounds. Shipper also moves about 3,000 pounds a month to Florida, Georgia, and North and South Carolina.	Jones to Greenville, Transcon and East Texas to Birmingham and Atlanta.	Because of the size of its loading dock, shipper has a problem with congestion during peak shipping periods. Red Ball makes daily pickups and utilization of this carrier would offer some relief to shipper's congestion problem. Shipper wants consistent second-morning service to Atlanta and Birmingham, and overnight service to Greenville.	Red Ball, Strickland, Bowman, and Johnson.
18. (227) Dallas, Tex.	See shipper under Mississippi heading.			
19. (228) Primrose Oil Company, Dallas, Tex. Petroleum products in drums and packages	From Dallas to points in Mississippi, Alabama, and Georgia. Some of the points to which shipments move are: Jackson, Miss.; Birmingham, Mobile and Montgomery, Ala.; and Columbus and Atlanta, Ga. The shipments weigh between 200 and 1,000 pounds.	East Texas, Gordons, and Transcon.	Transit time is important to shipper because it is soliciting new business in Alabama and Georgia and an important factor in sales is transit time. Gordons' service is not satisfactory because it has been slow in making pickups and deliveries and shipper has experienced tracing and claim problems with it. Specific examples of the poor service of Gordons were cited by shipper.	Harris.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
20. (231) Alexander Smith, Dallas, Tex. Carpet in full rolls.	Inbound to Dallas from Greenville, Miss., shipper receives about 100,000 pounds a month. Each TL shipment weighs about 27,100 pounds. Shipper expects an annual increase in its volume of five percent.	Jones' single-line service is used from Greenville to Dallas.	Shipper wants to have a choice of single-line carriers from Greenville to Dallas. It indicates that only Jones holds single-line authority from Greenville to Dallas. Jones' service is assertedly not satisfactory because it does not always provide overnight delivery. Shipper wants to have the services of an additional carrier.	Red Ball. Shipper indicates that although Gordons serves from Greenville to Dallas its route is circuitous.
21. (232) Temple Industries-Moulded Seat Division, Pineland, Tex. Water closet seat.	From Pineland during the first 6 months of 1966 shipper moved 18,444 pounds by Red Ball and 78,842 pounds in private carriage to Alabama; 50,353 pounds by Red Ball and 9,892 pounds in private carriage to Georgia; and 3,049 pounds by Red Ball and 79,633 pounds in private carriage to Mississippi. In Alabama the majority of its shipments go to Birmingham. Other Alabama points shipped to are Decatur and Huntsville. In Georgia shipments move to Atlanta, East Point, Rome, Athens, Albany, and Valdosta. The majority of its Georgia shipments go to Atlanta and about 30 percent of its Mississippi shipments move to Greenville.	Red Ball and private carriage.	Shipper wants to discontinue its private carriage operation and rely solely on Red Ball on eastbound shipments. It indicates that Red Ball is the only motor carrier serving Pineland.	Red Ball.
22. (236) Southwest Spring Manufacturing Company, Dallas, Tex. Springs, precision wire forms, metal stampings, and electronic boxes.	From Dallas shipper moves about eight LTL shipments weighing about 3,000 pounds to Huntsville, Ala., each month. Shipper also has movements to Mobile, Ala.	Gordons and Red Ball originate shipper's traffic.	Shipper wants direct, single-line service with consistent second-morning delivery. It has experienced delays with interchange.	Baggett.
23. (238) Frontemp-Artic Air, Division of Lone Star Manufacturing Company, Fort Worth, Tex. Automotive air conditioners.	From Fort Worth about 25,000 pounds a month moves to Birmingham and Florence, Ala., and Atlanta and Columbus, Ga. All are LTL shipments. Shipper has about 60 shipments a month with each shipment weighing an average of 380 pounds. Shipper also has movements to the stores of a specified customer which stores are located in Mississippi, Georgia, Alabama, Tennessee, Virginia, North and South Carolina, and Florida.	Roadway, Mercury and Merrin.	Shipper wants direct, single-line service. It is not satisfied with the existing service because of delays and damage. Shipper has complained to Mercury and it has received complaints with respect to the interline service of Merrin.	Baggett.
24. (239) Utley Carpets & Draperies, Fort Worth, Tex. Carpets in rolls.	Inbound to Fort Worth shipper receives about 77,000 pounds a year from Atlanta, Rome, Cartersville, Archer, Dalton, Calhoun, Roseville, and Hodges, Ga. Inbound to its affiliated store at Dallas, Tex., shipper receives annually within 16,000 pounds of the amount received at Fort Worth. The shipments to Dallas move from the above-described origin points.	Georgia Highway interlining with Mercury; RCA interlining with Gordons and Central; RCA interlining with ETSWNC and Southwest; RCA interlining with T.I.N.E. and the Chief; Baggett interlining with Mercury; Georgia Highway interlining with Mercury; RCA interlining with East Texas; Roadway, Murdoch interlining with Gordons and Central.	Shipper wants direct, single-line service from the named points in Georgia to Fort Worth. Transit time is important because shipper orders the carpet when a customer places an order with it. Shipper has lost sales because it could not deliver when promised. Shipper introduced a transit time study of 73 shipments delivered to Fort Worth from the aforementioned Georgia points between 2/9/65 and 6/23/66. The listed shipments make up about 95 percent of the shipments received at Fort Worth during this period. Including weekends about 40 of the 70 shipments for which transit times were given, were delivered in 6 or less days. The remainder were delivered in 7, 8 or 9 days (including weekends), except four shipments which were delivered in 11, 12, 13, and 14 days, respectively. Shipper is not satisfied with these transit times and it indicates that transit times to Dallas are similar.	Baggett.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
25. (240) Gibson Products Co., Seagoville, Tex. General merchandise	From specified points in the Southeast shipper has movements to its 11 discount centers in Arkansas; 23 discount centers in Louisiana; and 62 discount centers in Texas. The shipments weigh between 100 and 800 pounds each. Shipper has two stores in Little Rock, Ark., one in Texarkana, Ark., one in Greenville, Miss., one in Jackson, Miss., one in Shreveport, La. (it is expected to open a second store in Shreveport), one in Bassier City, La., and at those points in Texas which Strickland can serve it has two stores at San Antonio, one each at Temple, Paris, Wichita Falls, and seven in the Dallas area.	The interline services of the following carriers were used on the movements listed in shipper's transit time study: Ryder Red Ball, Georgia Highway, East Texas, Harper, Brown, Cole, T&P Railroad, Johnson, T.I.M.E., [illegible] Merchants, Perkins, Mercury, [illegible] Gordons, Acme, Floyd & Beasley, Dixie, Transcon, Central, Roadway and Duncan. The single-line services of Roadway were also utilized.	Shipper is not satisfied with the transit times of existing services. It introduced a study of 45 shipments delivered between 10/11/65 and 3/22/66 to its stores located at Palestine, San Antonio, Paris, Temple, Longview, Lubbock, Abilene, Tyler, Seagoville, Sherman and Big Springs, Tex., Shreveport, La., (five shipments) and Hobbs, N.Mex. (three shipments). Twenty-two of the shipments originated at points in Georgia, 15 at points in North Carolina and 8 at points in South Carolina. Excluding weekends and holidays the average transit time from the three-State origin area to points in Texas is 6.6 days. The average transit time of the listed shipments to Shreveport is 5 days, and the average transit time to Hobbs is about 7 days.	Strickland and Red Ball. Shipments moving from Georgia points other than Atlanta and at points in North and South Carolina would have to be interlined to Strickland by the originating carrier at Atlanta, Ga.
26. (242) Dallas Chamber of Commerce, Dallas, Tex			General increase in population and business of Dallas area. Slow transit times on shipments particularly those destined to Carolinas—times up to 28 days on one survey of 113 shipments made by Chamber of Commerce members.	Appears at request of Strickland Transportation Co., [illegible] Red Ball [illegible] Freight, Inc. witness specifically stated that witness appears simply to give data and is not supporting or opposing any carrier.
27. Julian Door Co., Inc. Inc., Dallas, Tex. Inbound-Cotton piece goods	Inbound freight to Dallas 40,000 to 90,000 pounds a month primarily from points in Pennsylvania, South Carolina, and Massachusetts.	Roadway in single line. Freight forwarders are Acme Fast Freight and Republic Car Loading. Joint-line services are Wilson-Braswell and Texas-Arizona. Transamerican and G&P Transportation are also used.	Desires to reduce inventories. Existing service has been slow, once causing plant shut down. Difficulties occurred when scheduled deliveries were necessary to coordinate inbound movements to production. For example difficulties occurred on scheduled deliveries of fabric from South Carolina and [illegible] from the New England area. Shipper experienced difficulties in tracing shipments. Shipper's transit time studies show that it is generally receiving between 5- and 7-day service from the Middle Atlantic and New England States, 5- and 6-day service from the Carolinas, 4- and 5-day service from Alabama and Georgia and between 3- and 7-day service from Atlanta.	Bowman, Johnson and Jones.
28. (244) Mount Corp., Building Products Division, Dallas, Tex. Galvanized metal forms, mostly rain pipes	From Dallas 150,000 pounds a month to Greenville, Gulfport, Hattiesburg, and Jackson, Miss. (LTL & TL), and to points in Alabama and Louisiana.	Ninety percent by private carriage. Red Ball, Dixie and Gordons. Shipper receives good service using Strickland to Little Rock, Ark., and Memphis, Tenn.	Relies on private carriage because of poor service rendered by existing carriers, and damage to merchandise. Strickland proposes overnight service to Greenville and Jackson.	Strickland.
29. (246) Goodier Co., Dallas, Tex. Perfumes, cosmetics, and household items	From Dallas LTL shipments to points in Florida, Alabama, North Carolina, Pennsylvania, Georgia, New Jersey, New York, Arkansas, Connecticut, and Tennessee. Receives several shipments a month.	Mercury, Transcon, Herrin, Red Ball, Roadway, Consolidated, Lee Way Motor Freight, T&P Motor Transport, Gordons, Jones, Springmeir Shipping, Braswell, and Ryder. Strickland Transportation Co., is no longer utilized because of problems with damage claims. Mercury has rendered good service to northern Florida.	Traffic has increased by 50 percent in last year. Shipments are COD to individual customers and complaints of delays in delivery have been frequent. Shipper has interlining problems of damage and difficulties in tracing shipments. Prefers promised 2-3 day direct-line service of applicants to points in Florida, Georgia, and North Carolina.	Bowman, Johnson and Jones. Under cross examination it was indicated that shipper was using joint-line service to a few points where direct service was available i.e. to Columbus, Ga., where Roadway can serve directly. Evidence of complaints was general.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
30. (247) Western Textile Products Company of Texas, Dallas, Tex. Outbound-waist bands, pocket materials and flaps, bindings, and cloth trimmings Inbound-cotton and synthetic piece goods	Inbound traffic to Dallas originates at Bethune and Gainesville, Ga., and averages 31,000 pounds a month. Inbound traffic also originates at Winston-Salem, N.C. and averages 11,000 pounds a month. Most traffic is LTL.	Gordons and Overnite joint-line service from Georgia points, interchange at Atlanta. Roadway direct from South Carolina, and Winston-Salem. Thurston and East Texas joint-line service. Piedmont Motor Lines-Roadway joint-line from Blacksburg, S. C.	Two to three days transit time proposed would enable shipper to reduce its inventory. Considers presently used two- and three-line service to be inadequate. Inconsistencies in transit times interfere with an orderly inventory plan.	Johnson and Bowman. Transit time study shows mostly 7-day service (ranges from 3 to 11 days). Many of the South Carolina mills own their own truck line and transportation of their supplies will continue to be interlined. For example, Piedmont Motor Lines is owned by Dearing-Milliken Mills of Blacksburg, S. C.
31. (248) Charles Bruning Co., Grand Prairie, Tex. Reproduction machine parts and paper and ammonia supplies	From Grand Prairie 90 to 110 shipments a month LTL. Shipments move to Jackson and Greenville, Miss., branch offices of shipper, and to customers in southern Mississippi.	Red Ball and Braswell.	Service of Strickland to Louisiana points has been very good. Air transportation is used two to three times a week for emergency shipments to branch offices because existing service is poor on emergency shipments.	Strickland. Witnesses from shipper's branch offices at Atlanta, Ga. and Jackson, Miss., also appeared.
32. (249) Murray Co. of Texas, Inc., Dallas, Tex. Cotton gin machinery and parts thereof	Origins of inbound traffic to Dallas include points in Alabama, North Carolina, and Georgia. Outbound shipments move to points in North Carolina, South Carolina, Alabama, Georgia, Mississippi, Tennessee, Arkansas, and Louisiana. LTL shipments of repair parts, move inbound and outbound. Shipments of cotton gin machinery are usually made in several truckloads.	Private carriage is used. Mercury, Transcon, Red Ball, and United. Mercury interlining with United is used to Atlanta.	Company has grown 15 to 20 percent a year for the past several years. Shipments of repair parts must be expedited and existing service has been slow. Shipments of cotton gin machinery are made in several parts and must be timed to meet installation procedures. Shipper complains of uncollected damage claims with Transcon. Shipper is not satisfied with transit time to the Carolinas and on inbound traffic. Its transit study shows that generally it receives 4-day service from Birmingham, Ala., and points in North Carolina, and 3- and 4-day service from points in Georgia.	Bowman, Johnson, Jones and Strickland. Use of flat-bed equipment required.
33. (250) Brass Craft Western Co., Inc., Dallas, Tex. Inbound-pipe connections, pipe joints, brass, bronze, and copper. Outbound-pipe fittings and valves.	Shipments originate at Thomasville, N.C. Shipments are usually LTL. Shipper has a plant at Thomasville and the ultimate products (pipe fittings, valves, etc.) are usually manufactured, in part, at Thomasville and completed at Dallas. Some rubber goods are shipped from Charlotte, N.C. Other items are partially manufactured in Dallas and then shipped to Charlotte for completion.	Roadway.	Shipper expects traffic from Thomasville to increase 10 percent. Delays in transit have occurred on shipments to ultimate customers and on interplant shipments. On occasion, this has resulted in cancellation of orders. Moreover, shipper was unable to give specifics. Most shipments take 5 days (range of transit time has been 3 to 8 days).	Bowman and Johnson. While Roadway provides direct service between Thomasville and Dallas, shipper believes that use of applicants will reduce transit times.
34. (251) Top Value Enterprises, Inc., Dayton, Ohio Outbound-general merchandise for use as premiums to redeem trading stamps Inbound-general commodities at Dallas, Tex.	LTL shipments move from points in Georgia, North Carolina, South Carolina, Tennessee, Alabama, Virginia, and Mississippi, to the distribution center location at Dallas. Between 376,000 and 525,000 pounds are shipped during an average 4-month period. Over 1 million pounds are shipped during Christmas and Spring periods.	Joint-line services of Ryder-Red Arrow, SAW-Ryder-Red Arrow, Georgia Highway Express-Roadway, Georgia Express, T.I.M.E.-Red Ball, New Dixie-Roadway, T.I.M.E.-Texas, Ohio Express, Viking-Jones, Youngblood-Eastern-Transcon, Akers-United-Mercury, ETSWMC-Red Ball, T.I.M.E.-Red Ball, and private carriage is utilized.	Existing transit times generally range from 4 to 7 days. shipper believes that Strickland's proposed 2 and 3-day service from Atlanta to Dallas would reduce the total transit time and allow shipper to reduce its inventory at Dallas. Shipper uses the services of [illegible] other areas and describes such service as being satisfactory.	Strickland. Deliveries of less than 100 cartons are accepted immediately but carrier must often wait a day after making an appointment with shipper to deliver large loads. Since [illegible] consolidated an extra day is usually tacked on. Accordingly, the transit time study in most instances indicates a transit time somewhat longer than the time it takes to transport the shipment from origin to Dallas.
35. (252) King Candy Co., Fort Worth, Tex. Candy	Ships 5,000 pounds a week from Fort Worth to Atlanta, Ga., 2,000 pounds a week to Birmingham, Ala., and 5,000 pounds a week to points in Georgia other than Atlanta.	Mercury-United in joint-line service and Transcon.	Shipper has a need for additional service particularly on shipments that are timed (i.e.) Christmas and Valentine candies. Shipper complained of a lost shipment with Transcon.	Jones, Bowman, and Johnson. Shipper alleges that East Texas refused to handle any shipments to points not on its line. Shipper used Roadway in the past but alleges that Roadway does not desire to handle perishable freight.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
36. (253) Artese Mexico and Artesania, Inc., Dallas, Tex. Imported furniture and household accessories	Ships nationwide and also has LTL shipments to points in Florida, Georgia, Alabama, North Carolina and South Carolina. These LTL shipments are made approximately once a week.	To Florida: Merrin, Roadway, Mercury, and Howard Hall (interline). To Georgia: Merrin, Roadway (direct). To Carolinas: Roadway.	Shorter transit time desired particularly on items made to order and sent to contractors, viz., restaurant furniture. Single-line service desired to alleviate damage and tracing problems.	Bowman, Johnson, and Jones.
37. (254) Consolidated Handbags, Inc., Dallas, Tex. Handbags and accessories.	LTL shipments move to points in Alabama, Florida, North Carolina, Georgia, Tennessee, and South Carolina. Handbags are shipped to retail stores on consignment so that there are returned shipments of unsold handbags. Volume of traffic is seasonal.	ETMF, Mercury, Roadway, Red Ball, Gordons.	Growth is about 10 percent a year—especially in the Southeast. Retail consignees usually maintain small investories and require expedited service.	Bowman, Johnson, and Jones. Most difficulties seem to be in securing service on returned shipments moving to Dallas.
38. (255) Coats and Clarks Sales Corporation, Dallas, Tex. Threads, yarns, tapes, zippers and needles.	Receives from 20,000 to 60,000 a week from Atlanta (TL shipments). Several shipments a week move outbound to Texarkana, Ark. Some shipments are received from Greenville, Miss.	Joint line: Deaton-Jones. Direct line: Southwestern Transportation to Texarkana.	Joint-line service causes inconsistencies in transit times interferring with maintenance of planned inventories. Shipper's transit time study shows that on the majority of its truckload shipments from Atlanta it is receiving 3-day service or better.	Jones and Red Ball. Shipper is satisfied with existing service to Texarkana.
39. (258) Dallas Bias Fabrics, Inc., Dallas, Tex. Textile products.	Shipments are received from North Carolina, South Carolina, Georgia, and Alabama.	The joint-line services of ET&WNC, Thurston, C&P, Piedmont, Packet, Overnite, Northern, Bowman, and Jones have been used. Mercury and Braswell are no longer used. Witness termed their service to be poor.	Shipper expects a 20 percent increase in inbound shipments during the year. Transit time is important on productions made to order. Shipper desires single-line service. Shipper's transit time study shows that it generally receives 5-day service from North and South Carolina and 4-day service from Georgia.	Bowman and Johnson.
40. (259) Cutler Laboratories, Inc., Dallas, Tex. Intravenous solutions and hospital supplies	Receives 160,000 pounds a month, mostly LTL, from shipper's facility at Chattanooga, Tenn.	Joint-line service of ET&WNC, Bowman, Robertson are used to Memphis, Tenn. East Texas, Western-Gillette, Strickland, and Red Ball are used from Memphis to Dallas.	Desires single-line service because of damage problems and inconsistencies of joint-line service.	Bowman.
41. (261) Textile, Inc., Dallas, Tex. Outdoor signs and displays	Ships LTL and TL lots to points in Georgia, Alabama, Tennessee, Florida, South Carolina, North Carolina, Pennsylvania, New Jersey, and New York. Shipments average one a week to North and South Carolina, two a week to Georgia and Alabama, and two or three a week to Florida.	Private carriage is used. Joint-line originating carriers are Transcon, Red Ball, Strickland, Mercury, Roadway, Merrin, and Arkansas-Best.	Growth of traffic volume. Time in transit is important on shipments to service construction sites. Red Ball had difficulty interlining at Mobile on a shipment to Florida because Central Truck Lines refused to accept the shipment unless solidly crated. Products are fragile so single-line service is preferred. Desires better pickup service to avoid having to warehouse the signs.	Bowman, Johnson, Jones, and Strickland. Shipper considers 5-day service to Southern Florida, 4-day service to Alabama, Northern Florida, and the Carolinas, and 7-day service to New York to be satisfactory.
42. (26) City Products Corporation, Dallas, Tex. Outbound-general variety store merchandise, Inbound-textiles and white goods	Receives LTL inbound shipments from points South Carolina, Georgia, Florida, Tennessee, Texas, Maryland, Virginia, Pennsylvania, New Jersey, New York. Receives 25,000 to 50,000 pounds of textiles a week from points in the Southeast. Shipments are made to Ben Franklin stores located throughout Texas and Louisiana, but majority of shipments to Dallas warehouse. The traffic from various origins is seasonal in nature, i.e. Hollowsen candy.	Freight Forwarders: Gordons, Transcon, Roadway, Strickland, East Texas, Brown, Valley Motor Lines, ETMF, and Viking Freight.	Growth of business requires quicker service. Transit time study shows a shipment from Troy, Pa., being in transit 21 days. Service averages 6 to 8 days from points in the Southeast. Shipper considers 4-day service from points in the Southeast to be reasonable.	Bowman and Red Ball.
43. (263) Duncan Foods Company, Houston, Tex. Coffee and tea	Distributorships located in 38 States. Shipper is primarily concerned with its roasting plant at Mississippi. Mostly LTL shipments are involved. Ships about once a week from Houston to Jackson.	Red Ball and Ryder in single-line service.	Coffee is sold to institutional buyers packed in paper bags because it is more economical, however, this renders the coffee susceptible to contamination from other lading and increases the need for speedy service. Coffee in bags is good for only one week. Complains of contamination on shipments by Red Ball. Used Ryder for a short time after dissatisfaction with Red Ball, but Ryder's service was poor.	Merrin. Proposes first-morning delivery to Jackson.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
44. (266) Gordon's Jewelers, Houston, Tex. Appliances, chinaware, cameras, radios, office supplies, and jewelry.	Shipments average 100 pounds each and range from 30 to 500 pounds. Shipments move to outlet stores in Mississippi, Alabama, and Louisiana. Receives shipments from Atlanta, Ga.	Herrin, ETMW, Mercury, Consolidated Copperstate and Red Ball. ETMW is the only single line carrier from Atlanta to Houston.	Shipper plans to expand into Georgia and Alabama. Scheduled deliveries are important to most advertisements of sales.	Herrin. Herrin, Red Ball, and several others provide single-line service to some points, but Herrin serves more than others. Shipper desires as few carrier as possible because of congested loading docks and thus desires Herrin's single-line service to be expanded Red Ball.
45. (268) Hanson Kickerwick, Inc., Greenville, Tex. Synthetic lady's undergarments	LTL shipments to Birmingham, Ala., and Atlanta, Ga., as well as other points in Alabama, Georgia, North Carolina, South Carolina, and Florida. It has 4 shipments a month to Atlanta and 5 shipments a month to Birmingham.	Joint-line service of Red Ball - Dixie, Red Ball - Transcon, Red Ball - Roadway, Red Ball - Gordons, Central - (same as with Red Ball) Dixie - Jack Cole.	Needs consistent single-line service to meet competition. Anticipates an increase in business. Most shipments are by Red Ball on joint-line service with interchange at Memphis or Dallas. Delays have occurred at point of interchange. Since Red Ball serves shipper in single-line service to various other points, not involved Herrin, and that service is good, shipper concludes that the delays result from the joint-line character of the operation.	Herrin. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Herrin will interchange at Jackson to reach other Mississippi points and at Mobile to reach other Alabama points.
46. (269) Thermo Plastics Corporation, district warehouse at Dallas, Tex. Plastic pipe	Shipper is interested about shipments from Dallas to Mississippi and points in the Mobile, Ala., vicinity. Three to four shipments a week move to Mississippi. Shipments range from 300 to 3,000 pounds, most are LTL.	Red Ball, T&P, Braswell was used but provided poor service because of delays and lost shipments.	Time in transit is important on shipments to construction sites in order to meet construction schedules. Customers in Mississippi have complained of delayed shipments and some customers are now ordering pipe from points other than Dallas as a result. Shipper accordingly desires additional service to supplement that of Red Ball and T&P.	Herrin. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Herrin will interchange at Jackson to reach other Mississippi points and at Mobile to reach other Alabama points.
47. (270) Web Filter Company, Inc., Winnsboro, Tex. Oil filters for internal combustion engines	Four shipments a month averaging 300 pounds to Birmingham, Ala., and four shipments a month averaging 195-700 pounds to Atlanta, Ga. Ships also to Miami and Jacksonville, Fla. and various other points in Southeastern United States.	The joint-line services of Red Ball-Transcon Red Ball - Roadway, Red Ball - Braswell, Red Ball - Dixie have been used.	Has increase in business due to Government contracts. Desires direct, single-line service to Birmingham, Ala., and Atlanta, Ga. Has customer complaints of slow delivery.	Red Ball.
48. (271) I.D. Brown Paint & Supply Company, Houston, Tex. paints.	Inbound shipments from Mobile, Ala., of paints, stains, and varnishes. One shipment a month of 10,000 pounds and two or three shipments a week of 500 to 4,000 pounds.	Joint-line services of West to New Orleans thence Herrin. Used Mercury and Red Ball in part.	Desires second morning delivery in order to meet competition, and hopes for next-day service. Shipper complains of damage with Mercury and Red Ball.	Herrin. Shipper alleges that he is supplied from his Los Angeles supplier more quickly than the Mobile supplier. Red Ball, Strickland.
49. (272) Levines, Inc., Dallas, Tex. Retail storeys-general merchandise	Inbound LTL shipments of 10,000 pounds a month from Atlanta, Ga., and inbound shipments of 8,000 pounds a month from Birmingham, Ala.	Gordons, Roadway, Transcon, and ETMW.	Has increased business and allege inconsistent service from all existing services. Needs additional service particularly during peak seasons.	
50. (273) National Cash Register Company, Inc., Arlington, Tex. Printed forms, checks, and other negotiable papers	Four shipments a week to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Average weight of shipment is 200 pounds.	Joint-line service of Red-Ball - Dixie and Roadway - (forwarding carrier).	Desires single-line service.	Red Ball. Shipper wants a carrier able to accept responsibility of carrying negotiable instruments. It, thus, wants single line service to limit the number of parties handling the instruments. Red Ball has provided reliable service in the past.
51. (274) Great Lakes Screw Corporation, Dallas, Tex. Metal screws primarily used by mobile home industry.	From Dallas shipments move to Atlanta, Ga., and Jackson, Miss. Shipments move to other Georgia points such as Americus, Vidalia and Valdosta.	ETMW, Red Ball, and Herrin.	Desires expedited service to meet competition. Lost customers due to delayed deliveries.	Herrin. Proposed service to Americus and Vidalia is two-line haul with interchange at Atlanta. Testimony concerned only with Georgia.
52. (275) Texas Express Co., Dallas, Tex. Outbound men's slacks for the Farah Mfg. Co. of El Paso, Tex.	LTL shipments with average weight of 350 pounds from warehouse in Dallas to Greenville, Miss.-1,500 pounds a month.	Gordons - direct single-line service Jones was used.	Has increased business. Shipper no longer uses Jones because of poor pickup service.	Red Ball Strickland while shipper has had difficulties in service to Greenville due to agents strong pick-up service by Gordons and Jones, Red Ball has provided good service to the points it is authorized to serve. Strickland has also provided good service where authorized. Shipper, however, admitted that Gordons service had improved recently.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
53. (276) A&B Bag Co., Dallas, Tex. Cotton place goods	LTL shipments. Receives 2-7 shipments a month from Talladega and Birmingham, Ala., and Atlanta and Chickamauga, Ga. Some shipments are received from Nashville, Tenn.	Alabama Highway, ETHF, Bowman, Tennessee, Mid South, Southwestern, and MCA.	Needs additional service. Transit study indicates that shipments are in transit 3 to 9 days, with most shipments in transit 4 to 7 days. One shipment from Chickamauga involved 20 days. The shipments from Birmingham and Atlanta involved 4 days.	Bowman and Strickland. Proposes joint-line service with interchange at Atlanta or Birmingham.
54. (277) Henderson Manufacturing Company, Pittsburg, Tex. Tractor parts	Ships on call and demand basis. 20 shipments a month to Southeastern United States—usually LTL ranging from 100 to 3,000 pounds.	Joint-line service Red Ball interchanging at Memphis, Tenn., or Dallas, Tex., with ETHF. Roadway or Bowman occasionally Southwestern Transportation originates the traffic. Private carriage is used for TL shipments.	Desires single-line service to Birmingham, Ala., and Atlanta, Ga. Business expected to increase to 75 percent due to operation of a new foundry. Wants additional service to other points, particularly those in Florida and North Carolina.	Red Ball.
55. (278) Wolfe Textile Company, Dallas, Tex. Outbound-sheets, towels, and draperies Inbound-textiles	Shipments weighing 300 to 1,100 pounds moves to points in Arkansas, Louisiana, Mississippi, and Tennessee. Inbound shipments move from North Carolina, South Carolina, Georgia, and Alabama (LTL).	Roadway, Gordons, North Alabama Express, and Red Arrow.	Shipper allows 10 days for movements from the Carolinas and 7 to 10 days for movements from Georgia.	Strickland. Strickland proposes second-morning delivery from interchange point at Atlanta. Witness appeared to have little familiarity with the shipping practices of his company.
56. (279) Friedrich Refrigerators, Inc., San Antonio, Tex. Store refrigerator counters, belt driven chook out counters, bottling equipment, air conditioners, bomb shells, and missile parts	$5,000,000 pounds a year outbound from San Antonio and 80,000,000 pounds inbound. Shipments to points throughout Southeast and also beyond scope of territory herein. Between 10 and 50 shipments moves a day.	Inbound shipments from Akron, Tenn., Interlined at Memphis by Robinson, ETHF, and Strickland. Inbound shipments from Decatur, Ala., Interlined at Memphis or Dallas by Gordons and ETHF.	Desires direct service to points in Arkansas on U.S. Highway 82 and to Atlanta and Birmingham. Time in transit important because many shipments to supply warehouses are on emergency basis. Alleged that on many occasions shipper has unsatisfactory service available to it.	Strickland. Plans to route traffic over the Birmingham gateway.
57. (280) Texsons Wholesale Jewelers, Dallas, Tex. Electrical appliances, radios, televisions, silverware, clocks, paper and plastics	From shipper's facilities at Dallas and Houston, Tex.; 1,000 shipments a month average weight of 120 pounds to all points in United States—most shipments from Dallas, but some from Houston.	Red Ball, ETHF, and Mercury. Interlines shipments to Arkansas along U.S. Highway 82, which Strickland will serve direct.	Complains of poor service, particularly to Jackson, Miss. Need for expedited service in seasonal periods, i.e., Mother's Day.	Strickland. Transit time study indicates that Red Ball has provided 2-day service to Jackson on most occasions although one shipment took 5 days. Shipper is not satisfied with 3-day service.
58. (281) Whitworth Carpets, Fort Worth, Tex. Carpet in rolls	Inbound shipments of 10,000 pounds a month, with average weight of 650 pounds from Chamblee, Atlanta, Cartersville, Lafayette, Lyerly, and Trion, Ga.	Joint-line service of Baggett to Birmingham, Gordons to Dallas. Central, Roadway and Georgia Highway Express. Three line service of Baggett-Gordons-Central or Roadway.	Desires single-line service. Lost sales due to 10-day transit time. Desires faster service to reduce inventory.	Baggett.
59. (283) Auto Air Accessories, Inc., Dallas, Tex. Automobile air conditioners and parts	Ships to Miami and St. Petersburg, Fla. Nashville, Tenn., Birmingham, and Mobile, Ala., and to points in the Northeast such as New York City and Boston, Mass.	Joint-line service origin carriers are Mercury, Harvin, and Transamerican.	Time in transit important during peak season due to expected increase in business. Desires consistent overnight service to Birmingham, 2-day service to St. Petersburg, and 4-day service to Miami and New York.	Bowman, Johnson, and Jones. Shipper admitted to being basically satisfied with existing service, although there were several instances of delays.
60. (284) Vernon Manufacturing Co., Dallas, Tex. Steel bath tubs and lavatories	Ten TL shipments a month destined to Birmingham, Ala., Atlanta, Ga., and Jackson, Meridian, Greenville, and Greenwood, Miss., from Dallas and Nacogdoches, Tex.	Private carriage is used. Mercury direct to Birmingham, United and Cordons to Greenville.	Would like to eliminate private carriage.	Strickland. Wants overnight service to Jackson, 2nd morning service to Birmingham, and 3-day service to Atlanta.
61. (286) Lorbacher Surgical Manufacturing Company, Texarkana, Tex. Hospital room supplies, canes, crutches, walkers, and safety rails	Has LTL shipments to Birmingham, Montgomery, Ala., Blytheville, Fayetteville, and Jonesboro, Ark., Atlanta, Chamblee, and McDonough, Ga., Greenville, Miss., Jackson, and Memphis, Tenn., and various other points in Kansas, Oklahoma, and Missouri.	Strickland, ETHF, and Arkansas-Best Freight in single and joint-line service.	Testified to instances of lost accounts due to delays in service or damage to shipments. Has used both single- and joint-line service and prefers single-line because of greater consistency of service.	Jones and Bowman. Transit time study shows mostly satisfactory service but with some extreme examples of delays, i.e., 10 days to Atlanta and 22 days to Memphis.
62. (287) Lummus Cotton Gin Co., Dallas, Tex. Cotton gin machinery	LTL traffic from Columbus, Ga., to Dallas, Tex. Shipments move from factory at Columbus to warehouse at Dallas. Between 7/21/64 and 9/14/64 shipper received 90 shipments totaling 58,810 pounds.	Direct line service of Roadway. Joint-line service of Baggett-ETHF and Cole-Harvin.	Needs expedited service on repair parts. Desires to reduce inventory at Dallas warehouse.	Bowman. Transit time study indicates that 5-day service is normal but that service on at least one occasion was 11 days.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
63. (288) Western Specialty Coatings Co., Division of Western States Lacquer Corporation, Dallas, Tex. Paint in cartons	LTL shipments from Dallas to Miami, Fla.	Joint-line service: ETNF, Herrin, D.C., Hall, all origin carriers, and Terminal Transport, Central, Ryder, Bowman, to Miami, all delivering carriers are used.	Customer maintains small inventory so that transit time too is important. Frequent complaints from customer about delays in service. Desires single-line service and fourth-morning delivery.	Bowman. Bowman has assured shipper fourth-morning delivery.
64. (289) Lorna Fashions, Inc., Dallas, Tex. Outbound-women's ready to wear items inbound-piece goods	Most shipments weigh 100 pounds or less. Ships nationwide, including points in the Southeast. Inbound shipments from Columbus, Ga., Grace, Lyman, Bishopville and Charleston, S.C., Yadkin, Kings Mountain, Edenton, and Winston-Salem, N.C., and points in New Jersey and New York City.	Brawley, Roadway, REA, Strickland, ETNF, Gordons, Transcon, Red Ball, and Greyhound Bus.	Has business growth. Time in transit important because sales are tied to advertisement schedules. Shipper's transit time study shows that it is receiving generally over 6-day service from the Carolinas; 7-day service from Georgia; 5-day service from Tennessee, and generally over 7-day service from New Jersey.	Bowman, Jones, Johnson.
65. (291) Windor Industries, Inc., Dallas, Tex. Aluminum windows	Ships in LTL lots throughout the South.	Transcon, Mercury, Roadway, ETNF are used in joint-line service. Single-line service to some points in Carolinas by Roadway.	Has increased business. Poor pickup service and customer complaints of delays.	Bowman, Johnson, and Jones. Shipper seems most interested in service to Atlanta, which can be handled in single-line service by several protestants.
66. (292) Aloe Division of Brunswick, Inc., Dallas, Tex. Syringes and needles	LTL inbound shipments from Deland, Fla.	Ryder, Red Arrow, Central, Brown Express are used in joint-line service with interchange at Houston.	Expects increased business. Existing service is inconsistent interferring with maintaining an inventory.	Bowman. Transit time study shows service ranges from 6 to 14 days with the average transit time being about 9 days.
67. (293) Vanguard Products, Inc., Dallas, Tex. Automobile air-conditioners and parts	From Dallas to points in North Carolina, South Carolina, Georgia, Florida, Arkansas, Alabama, and Baltimore and Silver Spring, Md. four to five shipments a week to each point and frequency increases from May to July. Most shipments weigh about 100 pounds. Shipments are made to Atlanta warehouse. Shipper had experienced a 10 percent growth in business in the year before the hearing and expects the increase to continue.	Mercury-Johnson and Mercury-Tamiami.	Desires 2-day service.	Bowman, Johnson and Jones. Shipper unhappy with service to Florida because Tamiami holds shipments on its dock.
68. (294) Lone Star Ribbon Company, Inc., Dallas, Tex. Ribbon and bows	From Dallas between 11/11/65 and 7/29/66 shipper had 21 movements weighing an average of 2,443 pounds to Brooklyn, N.Y.; South Hill, Va.; Rock Hill, S.C.; and Chattanooga, Tenn. Between March and July 1966 it had 20 shipments weighing 18,527 pounds from Chattanooga, Tenn.	Robinson Freight originates shipper's traffic from Chattanooga and interlines it at Memphis, Tenn., with East Texas and Cordoma. No longer uses ETNF because transit times too long.	Transit time is important because of the fast turnover of shipper's commodities, the low inventories maintained by its customers, and a highly competitive market. Transit times to Memphis range from 1 to 4 days to interchange point and 3 to 10 days till delivery.	Bowman and Johnson.
69. (295) Seneca Textiles Corp. Homestead Draperies, Inc. Division of United Merchants and Mfg. Co., Dallas, Tex. Draperies, piece goods, and rayon acetate.	Inbound to Dallas shipments are received from specified points in North Carolina, South Carolina, Georgia, Massachusetts, New York, Pennsylvania, Connecticut, Virginia, and Louisiana.	Old Dominion, Ryder, TCT, PNE, Pilot, East Texas, New Dixie, Smith's, Follmer, Fredrickson, Remarket, Rocket, Standard, G&F, Stern, Spector, Overnite, and Associated originate shipper's traffic. Acme, Central, East Texas, Gordons, Red Arrow, Red Ball, Roadway, Strickland, TOE, Transcon, and Viking deliver interlined shipments. Acme, Brasswell, East Texas, Herrin, Republic, Roadway, and Strickland are used in single-line service. Uses private carriage also.	Consistency of transit times important in order to maintain orderly inventories. Transit time study indicates shipments from Northeast range from 5 to 11 days and from Southeast 2 to 10 days with one interlined shipment from Old Fort, N.C., taking 17 days.	Bowman and Johnson.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
70. (296) Cain's Machine Shop, Dallas, Tex. Air Conditioning component parts	From Dallas to Miami and Tampa, Fla., shipper had 16 movements between January and June 1966. Between 60 and 70 percent of shipments must be delivered by a deadline date.	Herrin - Joint-line service with interchange at Atlanta.	Desires 4- or 5-day service to Miami and Tampa, presently operates on 10- to 14-day. Lead time on shipments covered by Herrin. Some air conditioners made to order, that had a deadline delivery date, had to work overtime. If transportation time could be cut, overtime could also be cut resulting in substantial savings.	Bowman.
71. (297) Pulse 6 Company, Inc., Dallas, Tex. Carpets and furniture	Inbound to Dallas traffic moves from specified points in Georgia, and North and South Carolina. Between January and July 1966 it received shipments from Calhoun, Dalton, Doggett, and Rossville, Ga.; Goldsboro, and West Jefferson, N.C.; Nashville, Tenn.; and Selma, Ala.	During the aforementioned 7-month period S... originated most of the listed Georgia shipments. Georgia Highway, Ryder, and ETSINC originated a few of the listed Georgia movements. B.C. interlines with Mercury at Birmingham, Ala. Thurston interlined with Red Ball at Memphis in a movement from North Carolina. Cole interlined with Red Ball and East Texas on three shipments from Nashville, Tenn. McLean interlined with Transcom on a movement from West Jefferson, N.C. Also uses private carriage.	Transit time important on special order [illegible] study, mostly on shipments from Georgia points indicates transit time of 3 to 10 days with most shipments taking 5 to 6 days.	Bowman, Johnson, and Jones.
72. (298) Harry Levis of Dallas, Inc., Dallas, Tex. Inbound - unfinished piece goods and materials used in the manufacture of blue jeans Outbound - cotton work clothing	Inbound shipments from Charlotte, N.C. Greensboro and Rockhill, S.C., Lindale, Ga., and Danville, Va., to Dallas, Tex. 3 to 5 TL a week. Outbound LTL shipments from Dallas and Breckenridge, Tex., to points in Arkansas, North Carolina, Georgia, Maryland, Florida, Virginia, South Carolina, and Northeastern States.	Inbound carriers are Transcom, Georgia, Strickland, Roadway (joint-line with various originating carriers). Outbound carriers are Jones to Arkansas, Roadway to Carolinas, Transcom and Roadway to Georgia, Mercury to Florida, Roadway, Strickland, and Yellow Transit to Maryland, Virginia, and Northeast Breckenridge traffic transported to Dallas by Merchants Fast Motor Lines.	Time in transit important on inbound shipments in order to get piece goods into production. Desires 2-day service from Carolinas to Dallas.	Bowman, Johnson, and Jones.
73. (300) Whitehall Laboratories, Inc., Dallas, Tex. Drugs and medicines	Inbound to Dallas shipper receives a total of about 200,000 pounds a month, all in TL lots from Hammonton, N.J.; and Milford, Bridgeport, Conn.	Sealand, Piggyback Plan service, and Johnson to New Orleans, La., thence Red Ball to Dallas.	Shipper requires protective service on about 3 to 5 percent of its traffic both during the summer and winter months.	Bowman and Johnson.
74. (305) American Screen Manufacturing Company, Dallas, Tex. Screens, windows and parts and curtain walls	From Dallas shipments move three or four times each week to Birmingham and Mobile, Ala.; Jackson, Miss., and Atlanta, Ga. Shipments range in size from 100 pounds to 5,000 pounds. Inbound shipments of steel from Monroe, La., to Dallas, Tex.	Gordons, Red Ball, Roadway, and Transcon. Herrin is used inbound.	Time in transit important to meet contractor deadlines. Desires 2 or 3-day service. Complains of delayed pickups by existing carriers.	Herrin. Herrin's inbound service considered very satisfactory
75. (306) Columbia Records Company, Dallas, Tex. Phonograph records and phonographs	From Dallas shipper has daily movements to Jackson, Miss., and Mobile, Ala., the shipments weigh between 50 and 4,00 pounds.	Red Ball, Gordons, and Braswell.	Need for expeditious transportation to get records on market during short period of peak demand. Wants overnight service to Mobile.	Herrin.
76. (307) Nathes Air Conditioning Company, Dallas, Tex Air conditioning units and parts	From Dallas shipper has daily movements weighing from 100 to 1,000 pounds to Birmingham, Mobile and Montgomery, Ala., and Atlanta and Columbus, Ga., and Jackson, Miss.	Gordons, Mercury, and Red Ball.	Wants expedited service particularly on repair parts.	Herrin.
77. (308) Beaumont, Tex.	See shipper under Georgia heading			

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, [illegible] and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
78. (309) Red River Textiles, Inc., Bonham, Tex. Machinery parts	Inbound to Bonham from Atlanta, Ga., between 6/19/66 and 7/6/66 shipper received four shipments weighing 837 pounds. It also receives traffic from Greenville, S. C.; Charlotte, N. C.; and Monticello and West Point, Ga.	Red Ball as the delivering carrier. Origin carriers are Ryder and Cole. Central and Roadway are used as delivering carriers.	Transit time is important because if machinery parts are not received shipper's manufacturing operation is shut down. Shipper prefers single-line service because of the transit time and tracing factors. Wants 3-day delivery from Atlanta.	Red Ball.
79. (310) Texas Tag and Specialty Company, Wolfe City, Tex. Paper, metal, and cotton tags and printed items	From Wolfe City each month shipper moves about 1,000 pounds to Atlanta, Ga., and 1,000 pounds to Birmingham, Ala. Additionally it ships about 4,000 pounds a month to points in North and South Carolina, Georgia, and Alabama. Occasionally it has a shipment to Greenville, Miss. The shipments weigh from a minimum to a maximum of 3,370 pounds.	Red Ball originates all of shipper's outbound traffic. The connecting carriers are either decided by Red Ball or Transcon is specified.	Wants single-line service because customers, particularly from Eastern States, have complained of delays. These delays occur at the interchange point.	Red Ball.
80. (311) Sexton Plant Farm, Tyler, Texas Rose bushes	From Tyler to Birmingham, Ala.; Greenville, Miss.; and Atlanta, Ga. During March 1966 shipper moved 195,479 pounds by Red Ball. While only a total of 2,403 pounds of this amount were destined to the three above-named points, an additional amount was shipped to points that normally would be interchanged in Atlanta.	Red Ball, originates all of shipper's LTL outbound traffic.	Shipper wants direct service to the aforementioned points. It indicates that transit time is important because rose bushes are perishable items.	Rec Ser...
81. (312) Amarlite Company, Dallas, Tex. Aluminum shapes and extrusions	Between Dallas and Atlanta, Ga. Shipper receives inbound at Dallas from Atlanta about 2,000 pounds a month and it ships outbound from Dallas to Atlanta about 2,000 pounds a month. The average shipment weighs 200 pounds and shipments move once or twice a week in each direction.	East Texas. The joint-line services of Roadway, Gordons, Red Ball are also used.	Shipper uses Red Ball to points in the area it serves from Dallas on a daily basis. It wants to limit the number of carriers it uses and relieve the congestion at its docks.	Red Ball.
82. (313) Pearl Pillow Company and Pearl Pad Company, Houston, Tex. Pillows and pads	From Houston shipper has daily movements to Atlanta and Columbus, Ga.; Birmingham, Mobile, and Montgomery, Ala.; and to other points in Georgia, Mississippi, and Alabama. The shipments weigh between 170 pounds and 1,000 pounds with the average shipment weighing about 425 pounds. Between 6 and 10 shipments move daily.	Marvin is used to points in Georgia, Alabama, Mississippi, and Florida. Inbound shipments are handled by Gordons and Roadway in joint-line service.	Desires 2nd-morning delivery on inbound shipments from Atlanta. Wants single-line service on outbound shipments because of damage problems.	Marvin.
83. (314) Texas Refinery Corp., Fort Worth, Tex. Chemicals and petroleum products	From Fort Worth to points in Arkansas, Mississippi, and Louisiana. Shipper has about 500 LTL shipments a month with an average weight between 100 and 1,000 pounds.	Private carriage is used. Southeastern, CTMT, Marvin, Rac Ball, Bragwell, and T&P Motor Freight, joint-line with interchange at New Orleans.	Wants to abandon a warehouse operation at Columbus, Miss., which was opened as a result of poor service to Mississippi points.	Strickland.
84. (315) Frigiking Division of Cummins Engine Company, Dallas, Tex. Inbound-material, and supplies for air-conditioning and refrigeration equipment. Outbound-air-conditioning and refrigeration equipment and parts.	Inbound to Dallas, shipper receives anywhere between 1 to 200 movements daily weighing between 1 pound and 90,000 pounds from points in the Midwest, East, and Northeast. Outbound shipments vary in number from 1 to 300 daily and in weight from 1 to 40,000 pounds, and move to destinations throughout the United States and foreign countries.	Red Ball, East Texas, Transcon, Marvin, Gordons, Strickland, air lines, bus lines, and MLA.	Wants overnight service from Jackson, Miss., to Dallas. Has had difficulties with pick up service of existing carriers. Transit study of 31 shipments from Jackson to Dallas, handled by Red Ball indicates average transit time of 2 to 3 days, with 6 shipments taking 4 or more days.	Strickland.
85. (317) A. C. Weber Company of Missouri, McKinney, Tex. Sewing machines	From McKinney shipper moves between 50 and 100 shipments a month with an average weight of 200 pounds a shipment to Magnolia, El Dorado, Crossett and Camden, Ark.	Joint-line service with interchange at Dallas and Central as the origin carrier.	Desires next-day service to southern Arkansas.	Strickland.
86. (318) Post-Guard Products, Inc., Dallas, Tex. Plastic and paper shelf lining, and insecticide	From Dallas to Tampa and Miami, Fla. During August 1966 approximately 7,500 pounds were shipped to Tampa. The tonnage to Miami is approximately the same. Shipper expected to double its traffic to Tampa and Miami by 1971.	Mercury, Red Ball, Marvin, and Transcon originate shipper's traffic.	Shipper lost the Food Fair account in Miami due to slow transportation service. It wants consistent 5-day service to Miami and desires consistent service so that it does not have to maintain a warehouse in Miami.	Bowman.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
87. (319) Sun A. Wing Company, Inc., Garland, Tex. Louvered products, bi-fold doors, interior and exterior shutters, and interior doors	Shipper operates a warehouse at Charlotte, N.C. and is opening one at Atlanta, Ga. Shipments are from Garland, Tex., to these warehouses and also directly to customers located throughout the Southeast, as well as other parts of the United States. An additional warehouse operation is planned for Fort Lauderdale, Fla.	Roadway and RTMF are originating carriers.	Transit time is important because shipper has a great deal of competition in the Southeast. It wants 2-day service to points in North Carolina, South Carolina, Georgia, and Florida.	Johnson and Bowman.
88. (320) Laura of Dallas, Inc., Dallas, Tex. Woolen and synthetic piece goods	Inbound to Dallas shipper receives movements from points in North and South Carolina. Between January and August 1966 shipper received deliveries of movements from Kings Mountain, Paw Creek, Morganton, Henderson, Yadkin, Biltmore, Old Fort, Greensboro, and Boger City, N.C., and North Charleston, Morgantown, Blackburg, Rock Hill, Carlisle, Tyrom, and Travelers Rest, S.C.	Roadway in single-line service. Occasionally Thornton interlining with East Texas, Huckaboo, interlining with East Texas, overnight interlining with East Texas, McLean interlining with Gordons, and Dixie interlining with Gordons are used at the supplier's direction.	Time in transit is important factor in shipper's manufacturing process. Desires single-line service. Needs more consistent service so that production plans can be maintained. Desires overnight service.	Bowman, Johnson, and Jones.
89. (321) Bishop Automatic Transmission Parts, Inc., Dallas, Tex. Automatic transmission parts	Between Dallas and Miami, Fla. Inbound to Dallas from Miami shipper averages about 500 pounds a month. The shipments weigh between 90 pounds and 200 pounds each. It receives 2 to 6 shipments a month from Miami.	Southern Plaza, Mercury, Herrin, and Braswell.	Shipper does not want to plan on more than 7 days lead time for shipments to Miami. It prefers single-line service to reduce handling of shipments.	Bowman.
90. (322) Dresher Manufacturing, Inc. Dallas, Tex. Headboards	From Dallas to points in Alabama, Arkansas, Georgia, and Florida. Between 9/1/66 and 9/21/66 shipper had movements to Tampa, Miami, Fort Pierce, Lakeland, Orlando, Fort Myers, Gainesville, Jacksonville, Daytona Beach, Oakland Park, Rockledge, Pensacola, and Panama City, Fla.; Atlanta, Columbus, Augusta, Rome, Marietta, Macon, Savannah, and Albany, Ga.; and Decatur, Mobile and Anniston, Ala.	Mercury, with one exception, originated all of the described shipments during the aforementioned period.	Shipper expresses a need for th the proposed 2-day service to Alabama and Georgia, the proposed 3-day service to Florida, and the proposed overnight service to Arkansas as it prefers single-line service in order to facilitate tracing of shipments.	Bowman, Johnson and Jones. Shipper's consignee has the right to require it to discontinue routings if the consignee so desires.
91. (329) Texarkana, Tex.	See summary of evidence under Arkansas heading.			
92. (332) Houston and Dallas, Tex.	See shipper under Louisiana heading.			
93. (336) A.M.A. Manufacturing Co. Inc., Grand Prairie, Tex. Automobile air conditioners	From Grand Prairie to points in Mississippi, including Jackson; to points in Alabama, including Birmingham, Mobile, and Montgomery, and to Atlanta, Ga.	Red Ball, East Texas, and Transcon.	Shipper needs a consistent service to meet construction schedules. It desires second morning service to Atlanta on LTL shipments and first afternoon on truckload. Desires first morning to Birmingham on TL and first afternoon on LTL. Transit time important since many customers tend to be "impulse buyers".	Herrin and Red Ball.
94. (339) Reynolds Aluminum Supply Company, Dallas, Tex. Outbound-industrial metals and building products Inbound-aluminum sheet, rods, and bars	Inbound to Dallas TL and LTL shipments are received from Listerhill and Birmingham, Ala., Atlanta, Ga. and points north of these gateways. Shipments weigh between 100 and 30,000 pounds. It receives 15 shipments a week inbound from Birmingham and Atlanta.	East Texas, Transcon, Gordons, and Mercury	Shipper needs consistent service to maintain inventory. It desires second-morning delivery on LTL shipments from Atlanta to Dallas and first-afternoon service on TL. Transit study indicates existing service of 4 to 5 days from Atlanta and Birmingham, with a few shipments made in 2 or 3 days and a few others in 7-8 days.	Strickland and Herrin.
95. (341) Aircrew Company, Dallas, Tex. Aircraft parts and materials	Inbound to Dallas shipper receives between 7,000 and 10,000 pounds each week from Birmingham, Mobile and Montgomery, Ala., and from Atlanta, Ga.	Mercury, Transcon, and Roadway.	Shipper allows 6 to 7 day lead time on shipments from Atlanta, Montgomery, and Birmingham, and 3 to 4 days from Mobile. It desires second-morning delivery on LTL shipments from Atlanta, first-afternoon service from Birmingham, and Montgomery and first-morning service from Mobile. Transit times important since inbound parts are purchased from the government for cash, and this cash remains tied up until the ultimate sale is made to shipper's customers.	Herrin.
96. (343) Shaw-Walker Company, Dallas, Tex. Metal office furniture	Inbound to Dallas shipper receives about 3 shipments a month from Atlanta, Ga., weighing between 150 pounds and 7,500 pounds. Outbound shipper makes weekly shipments from Dallas to Atlanta, Jackson, Miss., and Birmingham, Ala., weighing between 150 pounds and 7,500 pounds.	Herrin is used on an interline basis on outbound shipments and East Texas on inbound shipments	Single-line service is desired. Shipper wants second-morning service from Atlanta on LTL shipments and first-afternoon service from Birmingham. Using applicant in joint-line service transit times are about 4 days.	Herrin.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
97. (346) Tempo Decorative Fabrics, Inc., Dallas, Tex. Imbo[illegible] cotton [illegible] synthetic fiber fabrics and piece goods. Outbound drapery and curtain fabrics.	Inbound shipments are received at Dallas from Atlanta and Flintstone, Ga.; Sumter, Travelers Rest, and Clearwater, S.C.; Rocky Mount, Shelby, and Butner, N.C.; and Emporia, Va.; The inbound shipments are received daily and weigh between 100 and 3,000 pounds. Outbound shipments are made to points in Louisiana, Texas, Mississippi, including Jackson, and Arkansas. These shipments also weigh between 100 pounds and 3,000 pounds.	East Texas, Roadway, Transcon, T.D.X., Strickland, Herrin, Red Ball, and Brassell.	Transit study shows 3- to 5-day service from Atlanta by ETNF. Service from Carolinas ranges from 4 to 7 days. These times all involve weekends.	Herrin.
98. (347) Superior Switchboard & Devices, Division of Union Metal Manufacturing Co., Paris, Tex. Steel junction boxes.	From Paris shipper moves about 10,000 pounds a month to Atlanta, Ga.; 2,000 pounds a month to Birmingham, Ala; and 1,500 pounds a month to Cressville, Miss. The average weight of each shipment is about 800 pounds. Shipper expected its business to increase 300 percent within a few months of the hearing. Most of the shipments are LTL.	Red Ball, Southern Pacific Transport, Texas & Pacific Motor Transport, Roadway, and Strickland.	Transit time is important to shipper because 30 to 40 percent of its product is sold to contractors and it must deliver within 3 weeks of the order. Many of its customers face penalty clauses for construction delays. Shipper wants direct service to Atlanta by a carrier with terminal facilities in Paris.	Red Ball.
99. (348) Higginbotham Bailey Co., Dallas, Tex. Textile products.	Inbound to its Dallas warehouse shipper receives traffic from points in North and South Carolina, Alabama, and Georgia weighing about 150,000 pounds a month with the average shipment weighing between 200 pounds and 600 pounds. Additionally many shipments are made direct from points in the above described States to points in Louisiana, Arkansas, and Texas. During July and August 1964, 72 shipments weighing 2,440 pounds were made to Louisiana, 26 shipments weighing 1,685 pounds were made to Arkansas, and 3 shipments weighing 1,172 pounds were made to Texas. Representative destination points are Jena, Haynesville, Homer, Mansfield, Dubach, Jonesville, Pineville, Fort Allen, Baton Rouge, Morgan City, and Cottonport, La.; Hamburg, Monticello, and Mulberry, Ark.; and Lufkin, San Augustine, Port Arthur, Cooper, and Carthage, Tex. Shipments are almost always LTL.	Into Atlanta shipper uses Bowman, Dixie, and Overnight. From Atlanta it uses Gordons, T.I.M.E., Transcon, East Texas, and others.	Shipper desires better service between Dallas and Atlanta, so that overall transit times from textile mills in Carolinas and Georgia to Dallas, and shipments from Dallas to points in Louisiana through Atlanta can be reduced.	Bowman, Johnson and Red Ball.
100. (349) MIECO, Inc. Nacogdoches, Tex., Bronze valves.	From Nacogdoches shipper has traffic moving to Atlanta, Ga., and occasionally to Cressville, Miss. and Birmingham, Ala. It averages about 4,200 pounds to 5,000 pounds weekly to Atlanta. It also ships to Roanoke, Va. (about 5,500 pounds a week); Charlotte, N.C. (about 4,500 pounds a week), and Pinellas Park, Fla. (about 4,500 pounds a week).	Red Ball originates all of shipper's outbound traffic. To Atlanta it interlines with Ryder or East Texas. To Charlotte it interlines with Ryder, to Roanoke it interlines with Ryder or Mason & Dixon, to Pinellas Park it interlines with Ryder.	Shipper wants single-line service to Atlanta in order to reduce transit times and facilitate tracing on shipments dropped off at points between Nacogdoches and Atlanta.	Red Ball. Although Red Ball does not provide a single-line service to Roanoke, Charlotte, or Pinellas Park, shipper wants a greater selection of delivering carriers over the Atlanta gateway.
101. (351) Delta Quality Products Company, Laredo, Tex. Steel tubing and bolt and screw assemblies.	From Dallas to Birmingham, Ala., Atlanta, Ga., Jackson, Miss., some points in North and South Carolina, and points in Georgia. Shipper has between 6 and 8 movements a month which weigh between 200 and 400 pounds each.	Gordons, Transcon, Mercury, Roadway, and Red Ball.	Shipper has experienced a growth in business and needs additional shipments to points in Georgia and Alabama.	Strickland.
102. (356) John Fillis Company, Dallas, Tex. Wallboard and chalking compound.	From Trenton, N.J., and Baltimore, Md., to Dallas. Shipper receives two or three shipments a month from Trenton, weighing from 1,000 to 5,000 pounds. Shipper is not receiving anything from Baltimore, Md., now, but expects to receive four or five shipments a month.	Roadway, Spector, and ETNF	Wants faster service. Wants single-line service. Shipper wants 4- or 5-day service from New Jersey.	Johnson and Bowman. Several existing carriers have not been tried.
103. (357) Hegerdorns, Inc., Dallas, Tex. Shoe repairing supplies.	From Atlanta, Ga., Chattanooga, Tenn., Baltimore, Md., and Philadelphia, Pa., to Dallas. For the year 1965 and a portion of 1966 shipper received 36 shipments. Average weight 800 pounds.	Roadway, Dole, Bowman, ETWBC, Acme, Republic, Universal, Red Ball, ETNF, and Strickland.	Wants faster single-line service. Transit time from Atlanta goes up to 7 days [illegible] Chattanooga, and up to 10 days from Baltimore. All times include weekends. Wants proposed 2-day service from Atlanta and Chattanooga and 3-day service from Baltimore.	Bowman, Johnson, and Jones.
104. (358) Frozen-Rite Products, Dallas, Tex. Frozen bakery items.	From Dallas to points in Georgia, Virginia, Indiana, and North and South Carolina. 5 ips approximately one or two TL to the above areas a week.	LTL, Refrigerated Trans., and Frigid Food.	Needs reliable refrigerated service. Difficult to obtain adequate equipment. Wants Jones on, Bowman at least once a week for service to Atlanta and Birmingham and Johnson and Bowman single-line service to Georgia and Virginia.	Johnson, Bowman, and Jones. Most protestants cannot provide refrigerated service. No LTL refrigerated service to Birmingham. Requires refrigerated equipment.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
106. (359) Monbeygip Sales Co., Dallas, Tex. Tread rubber.	From Dallas to points in Alabama, New York, Pennsylvania, Florida, Tennessee, Maryland, Georgia, New Jersey, and North and South Carolina. From 6/1/66 to 6/30/66 shipper transported 45 shipments to above States. Average weight was about 400 pounds.	Mercury, Gordons, Transamerican, Roadway, Transcon, Mid Continent, and Red Ball.	Wants faster single-line service. Wants 1- or 2-day faster service.	Bowman, Johnson, Jones, and Strickland.
106. (360) Sherrod, Inc., Dallas, Tex. Carpet rolls.	From Tannaga and Cartersville, Ga., to Dallas. Receives 50,000 pounds each month from above points. From Dallas to El Dorado, Ark. Ships four or five times a month. Average weight 250 to 400 pounds.	Red Ball, Mercury, ETNF, Transcon, Roadway, T.I.M.E., Central, REA, and Baggett.	Wants faster service. Delays can cause loss of sales. Between 6- and 7-day transit time is shown on movements from Northwest Georgia points. Range is from 3 to 11 days including weekends. Wants 2-day service from Cartersville.	Bowman and Jones.
107. (361) Levines, Inc., Dallas, Tex. Retail items.	From New England, and the Middle Atlantic States to Dallas. From January 1965 thru June 1965 shipper received 73 shipments with an average weight being 400 pounds.	Roadway, Dorna, Modern, Nemarket, Fellmer, Branch, Keystone, Ward, Nivan, Old Colony, Motor, Morns, and Moser.	Wants single-line service which assertedly is faster and more consistent. Wants 4-day service from New England points and 3-day service from Mid-Atlantic points. Average transit time is now between 6 and 7 days including weekends, on shipments from points in this area.	Bowman and Johnson. Several existing carriers can provide single-line service.
108. (362) Williamson Dickie Mfg. Co., Fort Worth, Tex. Clothing.	From Fort Worth, Tex. to points in Alabama, Florida, and Georgia. From 5/2/66 to 5/31/66 shipper transported in excess of 100 shipments with an average weight of 100 pounds.	Mercury and Red Ball.	Wants better service. Allows 7 to 10 days to points in Alabama and Georgia and up to 12 days to points in Florida. Wants third- or fourth-day delivery as proposed by applicants.	Bowman, Johnson, and Jones. Shipper stated that Red Ball is a reliable and dependable carrier. Existing service is satisfactory.
109. (363) Fort Worth Carpet Co., Fort Worth, Tex. Carpets.	From Dalton and Cartersville, Ga., and Chattanooga, Tenn., to Fort Worth. Receives 20,000 pounds a month from Dalton and occasional shipments from Chattanooga.	Roadway, Baggett, United, Gordons, Ryder, Bowman, Mercury, Central, ETNF, Merrin, Red Ball, and SWT.	Wants faster transit time. Wants 2- or 3-day service as proposed.	Bowman. Shipper admits that he is not fully acquainted with carriers existing authority to originate shipments at Cartersville, Ga.
110. (364) Crown Machine and Tool Company, Arlington, Tex. Plastic items.	From Arlington, Tex., to points in Alabama, Florida, Georgia, Arkansas, and North and South Carolina. From 6/2/66 to 9/27/66 shipper transported almost 150 LTL shipments, average weight was about 150 pounds.	Merrin, Roadway, Red Ball, Transcon, ETNF, Strickland, and SWT.	Wants consistent and better transit time. Has had numerous customer complaints relating to shipping delays. Allows 4- or 5-days for Birmingham and Atlanta shipments. Other points in Georgia require one more day. Generally allows 5 or 6 days to Carolinas and Florida. Wants single-line service.	Jones, Bowman, and Johnson. Shipper was unaware of the fact that Merrin can perform a single-line service to several points. Shipper has many existing carriers available to it.
111. (365) Mannig's, Fort Worth, Tex. General dry goods.	From points in Georgia, North Carolina, South Carolina, Tennessee, and Virginia to Fort Worth. Receives 100,000 points a month from the above States. In June 1966 shipper received 96 shipments.	ETSWNC, Northern, Pulaski, Overnite, Thurston, Carolina, Catawba, Bowman, Cole, Braswell, ETNF, Eastern, Roadway, TCT, Federal, Perkins, Harper, Standard, Piedmont, Victor, Estes, S&W, Murdock, Transcon, and Georgia Highway.	Existing transportation services are inconsistent. Needs faster service to meet the demands of advertised sales. Most shipments are delivered between 4 and 6 days including weekends. Wants consistent 4-day service from all points.	Johnson and Bowman.
112. (366) Burke Division Brunswick Corporation, Dallas, Tex. Fiberglass and aluminum furniture.	From Dallas and Houston, Tex., to points along the eastern seaboard. Ships about 10 LTL shipments a day to all 50 States. Average weight is 250 to 300 pounds (LTL). From 2/15/66 to 9/26/66 shipper had almost 75 shipments to points on the eastern seaboard.	Strickland, Mercury, REA, Springmeier, Roadway, and Red Ball.	Transit time too slow. Shipper allows 7 days from Dallas and Houston to points in Florida, the Carolinas, and Georgia. It wants faster service.	Johnson, Bowman, and Jones.
113. (367) Guild Ind. Inc., Dallas, Tex. School furniture.	From Dallas to points in the eastern seaboard. From 5/13/66 to 9/29/66 shipper had over 40 shipments to the destination territory. Average weight 400 pounds.	Consolidated, Strickland, Yellow, Merrin, Roadway, Central, Red Ball, and ETNF.	Needs fast deliveries in order not to forfeit performance bonds. Allows 7 to 9 days transit time for shipments to Carolinas, Maryland and eastern Pennsylvania. Has received many complaints on late deliveries. Wants single-line service.	Johnson and Bowman.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
114. (368) Higginbotham Peerless Hardware Co., Dallas, Tex. General hardware	From points on the eastern seaboard to Dallas. From June through August 1966 shipper received about 60 shipments (LTL) weighing an average 150 pounds.	Acme, Midland, National, Republic, Texas, Universal, MEA, Yellow, Sealand, Consolidated, ABF, and Brown.	Wants faster transit time and prefers single-line service. Average transit time is 7 days including weekends.	Bowman, Johnson, and Jones. Shipper was unaware that Herrin can serve some points directly.
115. (370) La France Industries, Inc Ind , Dallas, Tex. Piece goods	From North Carolina, South Carolina, Georgia, and New York to Dallas. From Dallas to points in Georgia (between 7/7/66 and 9/20/66 shipper received 8 shipments from North Carolina totaling 1,111 pounds. Also, during this period it received 18 shipments from South Carolina totaling 2,362 pounds; 10 shipments from Georgia totaling 9,333 pounds; 6 shipments from New York totaling 1,940 pounds.	Transcon, Strickland, and Roadway.	Wants faster and more consistent transit time. Including weekends, average transit time is 5 days.	Johnson and Bowman. Service from Atlanta is satisfactory. Shipper does not route all traffic.
116. (371) Bowles and Adams Supply Company, Inc., Dallas, Tex Industrial supplies	From Georgia, South Carolina, and Tennessee to Dallas. Receives two or three shipments a week from Chattanooga, Tenn. (200 to 4,000 pounds). Receives one shipment a month from McBee, S.C. Receives one shipment a month from Cartersville, Ga. 1,000 pounds (LTL).	CNF, ETMF, REA, ATL, Thurston, T.I.M.E., Ryder, and TCA.	Wants better transit time in order to cut inventory. Prefers single-line service. Average transit time 9.3 days including weekends.	Strickland, Bowman, and Johnson. Shipper does not route all shipments.
117. (372) Tandy Leather Company, Fort Worth, Tex Leather goods	From Fort Worth, Tex. to Jackson, Miss. Ships five to eight shipments a month to above-described point. Each LTL shipment weighs about 150 pounds.	Red Ball and Transcon.	Needs faster deliveries because of tight inventory. Allows three to five days for shipments moving to Jackson. Wants overnight service.	Strickland. Transit time in three to four days currently.
118. (373) Marilyn Bags & Belts, Inc., Ferris, Tex. Belts and handbags	From Ferris, Tex. to Greenville and Jackson, Miss.; Birmingham, Ala., and Atlanta, Ga.	Central and Strickland.	Wants consistent single-line service.	Strickland. No volume figures given.
119. (374) Daniel Radiator Corp., Fort Worth, Tex. Radiator tubing and cores	From Fort Worth to Atlanta, Ga. Ships 20,000 pounds in LTL lots monthly to Atlanta (three or four shipments monthly). Ships to Greenville two times a month, about 500 to 600 pounds.	Transcon and Roadway.	Wants to open up sales in Greenville and Jackson, Miss. with Strickland's proposed service. Existing service is inconsistent and too slow. No transit times given.	Strickland.
120. (375) Connally Implement Supply Company, Amarillo, Tex. Plows and parts	From Atlanta, Ga. to Amarillo (2,000 pounds a month) and occasionally receives shipments from Birmingham, Ala. Also receives 6,000 pounds a month from Huntsville, Ala.	Red Ball, ICX, Transcon, Merchants, Roadway, United, Mercury, and ETMF.	Wants consistent single-line service in order to keep inventory down. Average transit time seven days, including weekends.	Red Ball.
121. (376) Mead Packaging Company, Dallas, Tex. Cardboard boxes	From Atlanta, Ga. to Dallas. Shipper receives about four million pounds a year. Shipper may require split deliveries in numerous Texas and Louisiana towns.	Transcon and ETMF.	Wants assurance of additional carriers to supply sufficient equipment. No transit or load times given.	Red Ball.
122. (377) Hexcel Products, Inc., Graham, Tex. Structure honeycombs (aluminum article)	From Graham to Marietta, Ga. (ships two times a month). Cape Kennedy (two times a month) and Orlando, Fla. (two times a month). Each shipment weighs about 100 pounds.	Red Ball.	Wants faster and more consistent deliveries. No times given.	Red Ball. Red Ball is only applying for authority to Atlanta, Ga., and will be unable to serve Marietta directly.
123. (378) Taylor Foundry Company, Wichita Falls, Tex. Cast iron tractor castings and pipe fittings	From Wichita Falls to Greenville, Miss. Ships 100,000 pounds a year (five TL a year). Also receives occasional shipments from Birmingham, Ala.	Red Ball, Viking, Campbell, and Jones.	Wants single-line service because shipper has lost items on interchange.	Red Ball. There is nothing in the record to show that existing service is unsatisfactory.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
124. (378) George E. Anderson, Company, Dallas, Tex. Electrical supplies	Dallas to Jackson, Miss. Shipper has about twenty shipments a month, with weights ranging from thirty to 5,000 pounds.	Red Ball and Jones.	Has had poor pickup service. Wants overnight single-line service.	Strickland. Shipper does not route all shipments.
125. (380) Home Interiors & Gifts, Inc., Dallas, Tex. Merchandise	From Dallas to points in Georgia. Shipper ships about 30 shipments a month. Average weight is 100 pounds.	Roadway	Wants better service. Lost business due to damaged shipments. No transit or load times given.	Strickland. Strickland could only serve Atlanta, Ga. Shipments could be interchanged at Atlanta.
126. (381) Xerox Corp., Arlington, Tex. Office machines	From Arlington to Greenville, Miss. Ships two to three shipments a week. Average weight is 75 pounds. From Atlanta, Ga., to Arlington. Shipper receives 5 to 10 shipments a month. Average weight 200 to 300 pounds.	Red Ball, ETMY, and Gordons.	Wants single-line service and an expedited service. No transit or load times given.	Red Ball.
127. (382) Magnolia Brush Mfrs., Inc., Clarksville, Tex. Brushes	From Clarksville to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Outbound shipments average 6,000 pounds a month. Between 5 and 10 shipments a week move to Atlanta. To Birmingham five shipments move a month, and there are occasional shipments made to Greenville.	Red Ball.	Wants cumulpoint single-line service. Has difficulty in tracing with joint-line service. Wants faster transit time. Transit and load times are not given.	Red Ball.
128. (383) U.S. Brass Corp., Plano, Tex. Brass and steel fittings	From Plano to points in Mississippi, Alabama, and Georgia. Shipper has from 1 to 15 shipments a day to points in the above States. Each shipment weights from 20 to 2,500 pounds.	Strickland, Red Ball, Campbell, Ryder, Bowman, Central, Mercury, Transcon, and Gordons.	Wants quicker service. Red Ball no longer picks up. No transit or load times given.	Strickland.
129. (384) Anchor Serum Company, Dallas, Tex. Veterinary supplies	From Dallas to points in Mississippi. Ships one LTL shipment a week to points in Mississippi. Each shipment weighs between 50 and 200 pounds.	Red Ball.	Wants faster reliable service because some supplies are perishable. Received customer complaints about excessive transit time. Wants proposed overnight service to Jackson. No transit or load times given.	Harris. No evidence of unsatisfactory existing service was presented.
130. (386) G. C. Gribble Co., Houston, Tex., Steel fenceposts	Inbound to Houston from Jackson, Miss. In September 1966 shipped 40,000 pounds from Jackson to Houston. In August 1966 39,000 pounds was shipped to Houston from Jackson.	Red Ball, West Bros., and Harris.	Wants overnight service from Jackson.	Harris. Red Ball offers direct service to Houston and there is no evidence that their service is inadequate to meet shipper's demands.
131. (388) Texas Wholesale Variety, Inc., Dallas, Tex. General merchandise	From points in North Carolina and Atlanta, Ga. to Dallas. Shipments are received weekly. Each shipment weighs about 750 pounds.	ETMY, Transcon, and Strickland.	Wants fast transit time from Carolinas. Wants second morning service from Atlanta to Dallas.	Harris. Shipper states he is dissatisfied with existing service, but presented no evidence of poor service.
132. (99) Potts Longhorn Company, Dallas, Tex. Leather	From Chattanooga and Buford, Tenn., to Dallas. Received 9 shipments from 1/19/66 to 7/19/66 with an average weight of about 1,500 pounds.	Bowman and ETMY.	Wants Bowman to have single-line service from faster transit times. Average transit time is four days, including weekends. Needs two-day service from Chattanooga and Buford.	Bowman.
133. (995) Cotter & Company, Dallas, Tex. Hardware	From Dallas to points in Mississippi. Plans to ship 7,000 pounds a month to Greenville, Miss.	Red Ball, ETMY, Roadway, Ryder, Cole, and Jones.	Wants consistent transit time and single-line service.	Red Ball. Jones offers single-line service from Dallas to Greenville. Several carriers offer single-line service to involved points.
134. (996) Pinnell Welded Wire Products Company, Inc., Dallas, Tex. Display racks	From Dallas to points in South Carolina, Florida, Georgia, Alabama, North Carolina, Virginia, New York, Pennsylvania, Maryland, Arkansas, Tennessee, and Massachusetts. From May 1966 through September 1966 shipper had in excess of 50 shipments with an average weight of 200 pounds.	Harris, Roadway, Red Ball, and Strickland.	Wants faster transit time allowing 7 to 10 days lead time in Florida and New York, 5 days to points in Alabama, Georgia, Virginia and the Carolinas. Wants 3-day service to Alabama and Georgia, 3-day service to Florida, and the Carolinas, and 5-day service to New York.	Johnson, Bowman, and Jone. There are several interlining combinations available which shipper has not used.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
135. (398) J. W. Davis & Co., Dallas, Tex. Sound equipment.	From Dallas to points on the eastern seaboard. From 4/1/66 through 8/30/66 shipper transported in excess of 80 shipments to above area. Average weight was 50 pounds.	NEA, H-W, Herrin, Roadway, Consolidated, Gordons, Herrin, and ETMF.	Wants faster more reliable service. Allows a lead time of one week on shipments for Florida. Needs 3-to 4-day service to points in Florida.	Bowman, Johnson, and Jones. Shipper does not route all shipments.
136. (399) Frazier, Inc., Dallas, Tex. Loudspeakers.	From Dallas to points in Florida. From 4/25/66 through 9/23/66 shipper had 9 shipments to Florida with an average weight of 200 pounds.	Roadway, Central, Herrin, and Mercury.	Shipper wants single-line service. Needs 3- to 5-day service to points in Florida. Presently allowing a lead time of 5 to 8 days.	Bowman. No proof that existing service is inadequate.
137. (400) Byrnes Distributing Inc., Dallas, Tex. Air coolers and heaters.	From York, Pa., to Dallas. Receives 10,000 pounds a month by motor carrier with an average weight of 150 pounds.	Universal, Consolidated, Acme, and Roadway.	Shipper wants 5-day service. Average transit time 7.2 days. Needs 5-day service from York to Dallas.	Johnson. Shipper wants to use motor carrier in place of TOFC service.
138. (401) Jones of Dallas Manufacturing, Inc., Dallas, Tex. Piece goods.	From Dallas to points in Georgia, Tennessee, Alabama, Florida, South Carolina, Paterson, N.J., and New York, N.Y. from 1/12/66 to 7/27/66 shipper had 54 shipments. No weights given. From points in States on the eastern seaboard to Dallas, Tex. from 12/28/65 to 7/22/66 shipper received in excess of 75 shipments. Average weight was 500 pounds.	Roadway, Gordons, Red Ball, ETMF, Braswell, Herrin, P.C.W., Evernite, Beasley, Strickland, Transcon, Ansers, Huckabee, and Catawba	Wants better service with a minimum amount of delays. Average transit time 5 to 6 days, including weekends. Wants 2- to 3-day service from Georgia, North and South Carolina and Alabama. Allows one week lead time to points in the destination territory, except New Jersey and New York.	Bowman, Johnson, and Jones.
139. (402) Fortune Designs, Inc., Dallas, Tex. Wearing apparel.	From points in Massachusetts, New Jersey, Pennsylvania, North Carolina, South Carolina and New York, N.Y. to Dallas. Receives 1,000 pounds a month, each shipment weighs 750 to 1,000 pounds. Will soon commence to have shipments outbound to points on the eastern seaboard.	Acme, Strickland, Trans Am., Yellow, Consolidated, Roadway, and Top Shippers Assoc.	Wants faster transit time so as to reduce inventory. Needs 2- or 3-day service from eastern seaboard points, and 5 to 6 days from Charleston and the Carolinas. Needs 2- to 3-day service from Carolinas, 3-day service from New York, and 4-day service from New England points.	Johnson and Bowman. Shipper has not used motor common carrier service for 4 years. Has not tried existing service. Lacks a shippers association
140. (403) Leff Bros Dry Goods Co., Houston, Tex. Dry goods and notions.	From points on the eastern seaboard to Houston. From December 1965 to April 1966 shipper received about 200 shipments with an average weight of about 400 pounds.	Roadway, Standard, Georgia Highway, Catawba, Ryder, Helms, L & N, Bell, A & O, Pine, Coles, Harper, Thurston, Strickland, Evernite, T.I.M.E., TCT, ETMF, and others.	Existing service is poor. Average transit time is 5 to 7 days. Needs 2-day service from Georgia and Alabama points, 3-day service from Carolinas and 4-day service from New York.	Johnson and Bowman. Shipper does not route all traffic. Shipper alleges that some carriers can provide single-line service from many points.
141. (405) (a) Southwest Towel & Linen Co., Dallas, Tex. Towels and linen. (b) Associated Motor Products, Dallas, Tex. Electric golf carts.	From Kannapolis (receives 1,000 pounds a month) and Charlotte, N.C. (500 pounds a month) to Dallas	ETMF, Gordons, Roadway, Central, Ryder, New Dixie, Fredericksen, and Evernite.	Wants faster service so it does not have to maintain a large inventory. Average transit time is 6 days, including weekends. Wants proposed 2-day service from Carolinas to Dallas.	Johnson and Bowman. Bowman and Johnson presently interlining with ETMF provides good service.
142. (406) Torginol of Texas, Dallas, Tex. Liquid lacquers, adhesive and dry paints.	From Hicksville (receives 20,000 pounds a month) and White Plains, N.Y. (receives 40,000 pounds a month) to Dallas	STL - SW, Cotton, Acme, Pan Am, and TOX	Wants faster transit time. Needs 4-day service from New York.	Bowman and Johnson.
143. (407) Tempo Decorative Fabrics, Dallas, Tex. Piece goods.	From points on the eastern seaboard to Dallas. From August to September, 1966 shipper received about 75 shipments with an average weight of 300 pounds. Shipper states that he receives normally about 60-70 shipments a month.	Sterne, Strickland, Roadway, Arley, G & P, ETMF, McLean, Spector, Midwest, Evernite, Acme, Empire, NRL, Trans Am, T.I.M.E, Ryder, Central, TDC, Mercury, Consolidated, Gordons, and Lee Way.	Wants faster transit time. To take advantage of 10-day payment discounts. Prefers single-line service. Average transit time 5 to 8 days, including weekends. Needs 2-day service from Atlanta and the Carolinas, and 3- to 4-day service from eastern points. Average transit time by Roadway was 10 days, including weekends.	Johnson, Bowman, and Jones. Shipper has no right to specify carriers but generally lets it to suppliers. Shipper is unaware that Ryder can serve Houston.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
144. (409) August Camera Company, Dallas, Tex. Cameras	From Dallas to Mobile and Birmingham, Ala., Jackson, Miss., and Atlanta, Ga. Shipments are made weekly to these points weighing between 100 and 2,000 pounds with an average weight of 300 pounds.	Red Ball, Herrin, Overnite, and Transcon.	Wants faster single-line service. Wants 2-day service from Dallas to Atlanta.	Herrin. No evidence in record to show that existing service is inadequate.
145. (412) Riviana Foods, Inc., Houston, Tex. Cello flin and paper bags.	From points in Georgia and Alabama, to its facilities at Houston and Bayou and Abbeville, La. Shipments from Atlanta weigh from 700 to 7,500 pounds. Average LTL shipment weighs 2,560 pounds.	Bowman, Herrin, and West.	Wants faster single-line service allowing 3 to 4 days lead time from Atlanta to Houston and 5 to 7 days from Atlanta and Mobile to its Louisiana plants.	Herrin. No evidence in record to show existing service is poor.
146. (413) Baldwin-Lotter Corporation and Colony House, Inc. Dallas, Tex. Cookware	From Dallas to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, New York, North and South Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia. During August 1966 shipper had in excess of 160 shipments to points in the above-described States. Average weight was 200 pounds.	Mercury, Red Ball, Transcon, ETMF, Herrin, Roadway, Spring, Coss., Lee Way, and West.	Too many delays. Service too slow, allowing a lead time of one week to Middle Atlantic States and 3 to 4 weeks to New England States. Wants single-line service.	Johnson, Bowman, and Jones. Existing service appears to be adequate.
147. (416) Prussil Hosiery Co., Dallas, Tex. Hosiery	From Hickory, Charlotte, and Burlington, N.C., to points in Louisiana and Texas. Shipper maintains a warehouse at Dallas. Receives weekly shipments ranging between 50 and 400 pounds.	Roadway, Transcon, and ETMF.	Wants 4- or 5-day service. Present service takes between 4 and 10 days.	Herrin.
148. (417) Panhandle Association Grocers, Inc., Amarillo, Tex. Grocery items, toilet preparations, and rugs	From Atlanta, Ga., and points in North Carolina, South Carolina, and Florida, to Amarillo, (weekly and bi-weekly shipments).	Roadway and Transcon, in single-line service. Merchants, Texas Oklahoma, and ICX	Wants faster service. Present average transit time 8 days, including weekends.	Red Ball. Transit time does not include all shipments during period. Specific volume not given.
149. (418) Rheinberg Manufacturing Co., Dallas, Tex. Women's clothing and cotton and synthetic cloth and piece goods.	From North Carolina and South Carolina, to Dallas. From Dallas to Jackson, Miss., Birmingham, Montgomery, and Mobile, Ala., Atlanta, and Columbus, Ga. Inbound - weekly shipments range between 100 and 5,000 pounds. Outbound - daily shipments range between 50 and 1,000 pounds.	Red Ball, East Texas, Roadway, and Gordons.	Wants faster service. Must now allow at least 10 days lead time. Having problems with pickups.	Herrin.
150. (420) McNeil's Sportswear Company, Dallas, Tex. Piece goods	From Atlanta, Ga., to Dallas. From Dallas to Jackson, Miss., and Birmingham, Montgomery, and Mobile, Ala. Inbound - weekly shipments volume not given. Outbound - daily shipments range between 100 and 500 pounds.	Gordons, Roadway, and Red Ball.	Wants second-morning service. Must now give 5 to 10 days lead time.	Herrin.
151. (421) Overseas Motor Corp., Fort Worth, Tex. Auto parts	From Fort Worth to points in Florida, Georgia, Alabama, Virginia, New Jersey, New York, North Carolina, South Carolina and the District of Columbia. Sixty-eight shipments moved during June, July, and August 1966 ranging between 13 pounds and 1,931 pounds.	Roadway, Mercury, Strickland, East Texas, Consolidated, and Herrin.	Wants 2-day service to Alabama and Georgia; 3 or 4-day service to Florida 5-day service to the Carolinas, and 4 day service to other points. Present transit time ranges between 4 and 8 days.	Bowman, Johnson, and Jones.
152. (422) Sun River Carpets, Inc., Dallas, Tex. Carpets	From White, Ga., to Dallas. Two TL shipments weekly ranging between 30,000 and 40,000 pounds.	RCA, Gordons, and East Texas.	Wants 2-day service. Must now allow 2 weeks lead time for delivery.	Johnson and Bowman.

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
153. (429) Vere Lee Garment Co., Fort Worth, Tex. Piece goods and clothing.	From Fort Worth to points in Alabama, Florida, Georgia, North Carolina, and South Carolina. Sixteen shipments were made during the month of July 1966 ranging between 26 pounds and 374 pounds.	Roadway, Transcon, Georgia Highway, Red Ball, Point, Gordons, McLean, Mercury, Baggett, Red Line, RCA, and Parcel Post.	Wants 2-day service to Georgia, Alabama and North Florida; 3-day service to the Carolinas, and 4-day service to South Florida. Present service to Alabama, Georgia and North Florida take 20 hours. Problems with delays, damages and generally poor service.	Bowman and Johnson.
154. (425) Dickson Jenkins Manufacturing Co., Fort Worth, Tex. Clothing.	From points in South Caroline, Delaware, Virginia, Tennessee, Pennsylvania, Massachusetts and Georgia, to Fort Worth. From Fort Worth to points in Florida. Inbound between 5/13/66 and 6/17/66 shipments ranged between 205 pounds and 4,758 pounds. Three outbound shipments weekly averaging between 200 and 250 pounds.	Roadway, East Texas, Standard, ET & WNC, Wooleyhan, Tamimal, and Perkins.	Wants 2- or 3-day service from South Carolina and Virginia, and 2-day service from Georgia. Average transit time now is 6 days.	Bowman and Johnson. Transit time appears to represent all shipments made during period.
155. (427) Stephen Loudon Carpet Co., Inc., Dallas, Tex. Carpets.	From Philadelphia, Pa., to points in Louisiana and Texas, including shipper's warehouse at Dallas. Weekly shipments range between 750 and 3,000 pounds.	Strickland, Acme, and Roadway.	Wants between 2- and 3-day service to Dallas. Shipper states Strickland holds traffic at origin for 4 or 5 days before attempting delivery.	Bowman and Johnson.
156. (428) American Thread Company, Dallas, Tex. Threads, tapes, and zippers.	From Marion, N.C. to Dallas. Truckload and LTL shipments range between 13 pounds and 52,502 pounds monthly.	Friedman, Ryder, East Texas, Ovarnite, Gordons, Red Ball, Sportop, Acme, Air Lines, Rail and Buses.	Wants 3-day single-line service.	Bowman, Johnson, and Jones.
157. (429) Modern Carpet Industries, Dallas, Tex. Carpets.	From Dalton, Ga., to Dallas. Two TL shipments move monthly.	Georgia Highway, Piggyback, Southern, and Mercury.	Wants 3-day single-line service. Must now allow 8 to 10 days load time. Average transit time now is 6 days, including weekends.	Bowman. Transit time does not include all shipments during period covered.
158. (431) Hunc Laboratories, Texarkana, Tex. Chemicals and drugs.	From Texarkana to Atlanta, Ga., and Birmingham, Ala. About 2,200 pounds move monthly to Atlanta and about 8,000 pounds move monthly to Birmingham.	East Texas.	Prefers single-line service, and desires the availability of more than one single-line carrier.	Red Ball. East Texas presently serves shipper daily in single-line service.
159 (432) Smith-Blair, Inc., Texarkana Tex. Fabricated pipe, fittings, and related steel articles.	From Texarkana to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss., and points in Florida. Monthly shipments range between 32 and 6,640 pounds.	East Texas A.B.F. and Red Ball.	Wants an additional single-line carrier.	Red Ball. East Texas presently serving shipper in single-line service.
160. (433) Southwestern Drug Corp., Dallas, Tex. Pharmaceutical products.	From points in Massachusetts, New Jersey, Connecticut, New York, Georgia, Maryland, Virginia, and North Carolina, to shipper's distribution centers located at points in Texas. Monthly shipments range between 46 and 3,776 pounds.	Strickland, Midland, Rapid Trans. Acme, Star, National, East Texas, Texas Freight, Transcon, Hanks, Bowman, Watson-Wilson, and Souther-	Wants faster service. Average transit time is now 6 days, including weekends.	Bowman, Johnson, and Jones.
161. (434) Southwest Pump Co., Bonham, Tex. Gasoline pumps and related parts.	From Bonham to Atlanta, Ga. About 60,220 pounds moved between 1/4/66 and 6/17/66.	Red Ball, Central, and Roadway.	Wants 3-day service. Shipper states that average transit time is now between 4 and 6 days, including weekends.	Red Ball. Roadway presently serving shipper in single-line service to Atlanta. No specific complaints.
162. (435) Dettelbach Pesticide Corp., Dallas, Tex. Insecticide raw materials.	Between Dallas and Greenville, Miss.; and between Dallas and Atlanta, Ga. Shipper moves 1,000 pounds a month from Dallas and approximately 40,000 pounds is received at Dallas from Atlanta.	Red Ball, F & W, ET & WNC, East Texas, and Roadway.	Wants second morning service. Present service too inconsistent.	Red Ball. Roadway removed 2-3-day service excluding weekends.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
163. (436) Coronet Carpets Inc., Dallas, Tex. Carpets	From Dalton, Ga., to Dallas, Fort Worth, and Houston, Tex. About 400,000 pounds of TL and LTL shipments move each month.	Roadway, Piggyback, Georgia Highway, Bowman, East Texas, Transcon, Gordons, and Jones.	Prefers single-line 3-day service. Must presently allow between 5 and 7 days lead time. Average transit time is 6 days, including weekends.	Bowman, Johnson, and Jones. Transit time does not appear to include all shipments during period covered.
164. (437) Marlite Division of Masonite, Grand Prairie, Tex. Wallboard	From Atlanta, Ga., to Grand Prairie and return; and from Grand Prairie to Birmingham, Ala., and Greenville, Miss. Shipments range between 100 and 3,000 pounds three to four times a month.	East Texas, Mercury, and Red Ball.	Wants faster and more consistent service.	Red Ball. Shipper has available the single-line service of Roadway, Transcon, and Gordons between Atlanta and Dallas (Grand Prairie is in the Dallas commercial zone), and Mercury to Birmingham.
165. (440) Royal Crown Bottling Co., Houston, Tex. Flavoring compounds.	From Columbus, Ga., to Houston. Weekly TL and LTL shipments range between 200 and 8,500 pounds.	Cole, Herrin, Ryder, and Missouri Pacific.	Wants second morning service. Must now allow 7 days lead time.	Herrin.
166. (444) Dallas Brush Manufacturing Co., Dallas, Tex. Plywood, steel, and bale fiber	From points in South Carolina, Vermont, New Jersey, and Pennsylvania to Dallas. About 50,000 pounds moves monthly.	Central, Lansdale, Welch, North Penn., Sea-Land, Overnite, Transamerican, Roadway, Republic, Mid-Continent, Brown, Strickland, and Transcon.	Needs faster service. Wants 3- to 4-day service. Average transit time is now 7 days, including weekends.	Bowman and Johnson.
167. (445) Dallas Handbag Co., Dallas, Tex. Ladies handbags, gloves, and belts	From Dallas to Mobile, Ala., Jackson, Miss., and Atlanta, Ga. Weekly shipments average about 150 pounds.	Red Ball, Braswell, East Texas, and Gordons.	Wants faster service. Must now allow between 4 and 5 days lead time. Shipper has experienced delays in pickups.	Herrin.
168. (450)	Dallas and Houston, Tex.	See shippers under Georgia heading.		
169. (452) Sears, Roebuck and Company, Dallas, Tex. General merchandise	Inbound from about 2,000 suppliers in Tennessee, South Carolina, North Carolina, Georgia, Alabama, Florida, and Mississippi. Shipments move to shipper's warehouses located at Dallas, Houston, and San Antonio, Tex.; Oklahoma City and Tulsa, Okla.; Shreveport, La.; and Albuquerque, N. Mex. Also the shipments move to its stores located in western Louisiana, portions of Arkansas and Missouri, Texas, Kansas, Oklahoma, and New Mexico. Between July 1965 and March 1966, shippers had 2,420 shipments from the origin territory to the destination territory.	Harper, ET&WNC, Ryder, ETMF, Georgia Highway, Perkins, Gordons, T.I.M.E., Transcon, and Roadway, among others originate the traffic. Central, ETMF, Gordons, T.I.M.E., Red Ball, Mercury, Roadway, Transcon, Brown, Herrin, Braswell, among others, deliver shipper's traffic.	Shipper indicates that some of the service it receives to the Southwest is good. However, it is not consistently good and shippers must maintain a larger inventory than it desires. Shipper wants at least 4-day service to Dallas on 85 percent of its shipments and overnight service to Louisiana on about 90 percent of its shipments. Occasionally, it requires 2-day service to Southwestern points. The average transit time of the 2,420 shipments listed, including weekends was 6.3 days.	Strickland, Red Ball, and Herrin.
170. (455) Dieper Jeans, Inc., Dennison, Tex. Outbound-children's wear and dresses. Inbound-cotton piece goods	Inbound to Dennison from Biltmore and Greensboro, N.C. and points in South Carolina, Mississippi, Georgia, and Virginia. About 100 inbound shipments are received each month with an average weight of 1,000 pounds a shipment. Outbound from Dennison shipments move to Atlanta, Ga.; Birmingham, and Montgomery, Ala.; Jacksonville, Fla.; Jackson, Miss.; Monroe, La.; Charlotte, N.C.; Roanoke and Richmond, Va.; and Washington, D.C. Between 500 and 600 shipments a month weighing between 53 and 250 pounds a shipment move to these points.	Roadway renders single-line service from North and South Carolina. The services of ET&WNC interlining with Western Gillette, Ryder with Central, Cedartown with Gordons, and Overnite, and GME are used. Central, Gordons, and Red Ball originate most of shipper's traffic from Dennison.	Shipper receives complaints almost every day regarding the delivery time on shipments to the Southeast. It wants consistent 4-day service between points in the origin and destination territory. A transit time study of 24 shipments delivered between March 1965 and May 1966 shows that on inbound shipments to Dennison shipper is receiving between 4 and 12-day service, including weekends and in all but one instance where the transit time involved 10 or more days including two weekends. The listed shipments moved from North and South Carolina, Virginia and Georgia. The one shipment delivered in 4 days did not include a weekend. Including weekends the average transit time on these shipments is 5.7 days.	Strickland. Shipper was not aware that Roadway serves all the points but one in Virginia, North and South Carolina, and Georgia listed on its transit time study. This carrier's service is described as satisfactory.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
171. (456) Tecumseh Products, Dallas, Tex. Compressors and air conditioners	Outbound from Dallas shipments move to Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. Shipper has about 30 outbound movements a month which weigh an average of between 1,000 and 2,000 pounds a shipment to these points. Shipper has about the same volume of inbound movements. Between 1/30/64 and 9/7/64 shipper had 51 movements to Jackson; 19 to Birmingham; 5 to Huntsville; 1 to Mobile; and 1 to Helena, Ala. All of the shipments were LTL.	Strickland, Herrin, Red Ball, Mercury, East Texas, and Transcon.	Shipper wants overnight service between Jackson and Dallas and second-day service between Birmingham and Dallas. It introduced a transit time study of 38 shipments - 19 of which moved from Jackson to Dallas and the remainder of which moved from Birmingham to Dallas. All of the shipments were handled in the first 9 months of 1964. Seven of the shipments from Jackson were delivered in 2 days (one including a weekend). Transit times were not given for 3 of the Jackson shipments and the remaining 4 shipments were delivered in 4 days, including weekends in all instances. From Birmingham shipper is receiving between 2 and 3-day service. In all but one instance where delivery required more than 3 days a week was involved.	Strickland. Shipper believes that only Mercury provides single-line service from Dallas to Birmingham or Mobile. Red Ball renders second-day service excluding weekends and holidays.
172. (457) Leiter of Dallas, Dallas, Tex. Textile products	Inbound to Dallas shipper receives most of its traffic from North and South Carolina with some from Alabama, Mississippi, and Arkansas. Shipper receives about 30,000 pounds monthly.	Air Freight, REA, Bowman, Mercury, Roadway, Thurston, ETMT, Piedmont, Huckabee, North Alabama, Gordons, T & S, Red Ball, and Strickland.	Shipper wants overnight service between Jackson and Dallas, and second-morning service between Atlanta and Dallas. It introduced a transit time study of 34 shipments delivered between 1/22/65 and 7/26/64 to Dallas. Of the 29 shipments, 22 moved from points in North Carolina, 3 moved from points in South Carolina, 2 moved from Alabama, 1 from Mississippi, and 1 from Arkansas. Including weekends, the average number of days in transit was 7.1.	Strickland.
173. (459) Alton Manufacturing Company, Dallas, Tex. Air conditioners and air cleaners	From Dallas to points in Florida, Georgia, and North and South Carolina. Between January and August 1964 shipper had 106 shipments to specified points in Georgia, Florida, Alabama, and North and South Carolina. All of the shipments weighed under 10,000 pounds with some weighing only 10 pounds.	Transcon, Roadway, ETMT, Gordons, Mercury and Herrin. On shipments to Florida Herrin interlines with WD & P and Ryder.	Shipper is not satisfied with the existing service especially to points in Florida. It cited one example of poor service on the part of Herrin.	Bowman, Johnson, and Jones. Shipper is reasonably satisfied with present single-line service by Herrin to Jackson.
174. (461) American Permanent Ware Company, and Tray Service Co., Dallas, Tex. Cooking pans and serving trays.	From Dallas between 8/1/63 and 10/3/64, shipper had a total of 16 movements, weighing a total of 5,756 pounds with an average weight of 360 pounds to Miami, Tampa, Jacksonville, and Hialeah, Fla. Occasionally, shipments are made to other points in Florida.	Herrin is used to Jacksonville, Red Ball, Transcon, Brazwell, and Gordons with connecting carriers are also used.	Shipper maintains a warehouse at Miami, but it is unable to maintain a complete inventory. It is not satisfied with the transit time to Florida.	Bowman.
175. (462) Texarkana Concrete Products Company, Inc., Texarkana, Tex. Bolts, nuts, asphalt, glaze, plywood, machine parts and sales items	Inbound to Texarkana between January and April 1964, shipper received 2 shipments from Kansas City, Kans.; 1 from Birmingham, Ala.; 1 from both McComb and Jackson, and 2 from Pascagoula, Miss.; 1 from Memphis, and 2 from Sweetwater, Tenn.; and 10 from Baltimore, Md. All of the shipments were LTL with an average weight of 1,200 pounds.	ABF, ETMT, Red Ball, Arizona Motor Freight, West, Roadway, ET & WNC, Davidson, Strickland, and Jones.	Shipper wants 3-day service from Baltimore and Philadelphia; and second-morning service from Kansas City and Birmingham. It would like another carrier with terminal facilities in Texarkana. Shipper's transit time study covered shipments delivered between January and April 1964. Ten shipments from Baltimore were listed. Seven of these moved through Dallas with transit times to this point, including weekends, of between 4 and 8 days. Two shipments from Sweetwater were delivered in 12 and 7 days, including weekends; one from Memphis was delivered in 3 days, including a weekend; and 1 from Birmingham was delivered in 3 days, including a weekend.	Bowman and Jones.
176. (463) H.T. Ardlingen & Son Company, Dallas, Tex. Glassware and woodenware	From Dallas to points in Florida (7,000 pounds a month), Alabama and Tennessee (32,000 pounds a month) and Georgia, North Carolina and South Carolina (30,000 pounds a month). Average shipment weighs 200 pounds.	Johnson, Ryder, T.I.M.E. Transcon, SWT, Gordons, ETMT, Red Ball, Mercury, Roadway, and Bowman.	Wants single-line service to most points to avoid delays	Johnson, Bowman, and Jones. Roadway offers single-line service to points in Carolinas and Georgia. Shipper seems satisfied with Roadway but wants added competition.

Summary of evidence of supporting shippers—Continued

Texas—Continued

Shipper, location and commodities	Origin, destinations, points, type and frequency of traffic	Existing services utilized	Reasons for supporting application	Application supported and remarks
177. (MC[illegible]) Baker Refractories, Division of Dresser Industries, Inc., Dallas, Tex. Paper products.	From shipper's Dallas warehouse to Atlanta, Ga. and From Atlanta to Dallas (5 to 10,000 pounds, on time period specified); From shipper's Atlanta facilities to southern Arkansas and From Dallas to southern Arkansas (From 1,000 to 20,000 pounds a month); and Louisiana (20,000 pounds a month) and 10,000 pounds a month From Dallas to El Dorado.	ATSF, Strickland, Red Ball, and Brownell.	Wants overnight service from Atlanta to Little Rock and second morning service to other Arkansas points. Wants overnight service from Dallas to points in Arkansas Highway 82. It allows 10 days lead time. From Atlanta to Camden, Ark., and wants 2-day service. Wants overnight service from Atlanta to Shreveport.	Bowman, Johnson and Jones. Red Ball can serve open points directly.
178. (MC[illegible]) Mart Below Inc., Arlington Tex. Sporting goods.	From Arlington to points in Georgia, Florida, Ohio, Utah, and New Jersey. From 1/[illegible] to 10/[illegible] shippers had to ship[illegible] to points in the st[illegible] Texas. Each shipment weighed [illegible] to 500 pounds.	Strickland, Thompson, T&P, and Rambler [illegible]	Each letter transit time with less damage. Wants 4 or 5-day service.	Jones, Johnson, and Bowman. Newry cited Norris to Florida points. No evidence to show that existing service is inadequate.
179. (MC[illegible]) Fleetline Transit Inc. [illegible]	[illegible] was asked through [illegible] Exhibit 23,[illegible] each a month From three points [illegible] shipping 1,[illegible] pounds a week [illegible] to Texarkana, Ark.	Verne shipped to [illegible]	Wants proposed service to help develop business.	Bowman, Johnson, and Jones. Traffic shipped in dromedaries requires insulated equipment.
[illegible] Arthur Company, Dallas, Tex. Floor coverings, linen.	From Dallas to points in Virginia, North and South Carolina, Florida, and Alabama. On return flights given except when shipments weigh less than 2,000 pounds.	ATSF, Red Ball, Thompson, Jones, Southwestern, Central, and Texas.	Problem with transit time and rate restrictions.	Bowman, Johnson, and Jones. No evidence presented to show need for additional service or unsatisfactory existing service.
180. (MC[illegible]) Telelight Electric Company, Dallas, Tex. Electric electronic engineering products.	From Dallas to Atlanta, Ga., and Jackson, Miss. Ships to the above points once a week. Each shipment averages 500 pounds.	Red Ball, Brownell, and Southern	Has loading and late problems. Wants overnight service to Jackson and second morning service to Atlanta.	Norris. It appears that no evidence was submitted to show actual loss or poor transit time.
181. (MC[illegible]) Texas Piano & Organ Co., Dallas, Tex. Air conditioners, furnaces and parts.	From Dallas to points in Mississippi. Daily shipments are made to points in Mississippi. They range from 100 to 500 pounds with an average of 250 pounds.	Red Ball and Brownell	Wants consistent transit time to Jackson, Miss.	Norris. Contract in Jackson designated carrier. No complaints about Brownell's service.
182. (MC[illegible]) Chittenden Copper Co., Dallas, Tex. Copper.	From Cartersville, Ga., to Dallas approximately 30,000 pounds seven each month.	ICA or Georgia Highway to Atlanta, Ga., and Lester Freight with either Roadway or Ryder to Dallas.	Problem in timing under joint-line arrangement and need for expedited delivery to 2-day service.	Bowman. Shipper indicates that it has been receiving shipments on a regular basis.
183. (MC[illegible]) Ping Textile Mills Co., Dallas, Tex. Cotton and synthetic fibers.	From points in the Southeast to Dallas between 500 and 1,500 pounds seven three times a week.	Southern, East Texas, Thompson, and Brownell	Existing carriers have not been able to provide overnight service from Atlanta, Ga., to Dallas as promised.	Norris. Shipper expressed a need for service from Atlanta only. Applicant does not offer overnight service.
184. (MC[illegible]) Aluminum Co., Dallas, Tex. Office furniture.	From Dallas to points in the Southwest and Mississippi, approximately 500 pounds seven twice a week.	Red Ball and Brownell.	Dissatisfied with delivery time. Needs overnight service to Jackson, Miss.	Norris. Red Ball offers second-day service to Jackson, and has never had a complaint from customers.
185. (MC[illegible]) W. E. Porter Co., Dallas, Tex. Industrial boxes, P-bolts, radiator hoses, and conveyor belts.	From shipper's Atlanta, Ga., facility to points in Texas and Louisiana (approximately 10,000 pounds a month); From the Dallas, Tex., facility to Atlanta (approximately 2,000 pounds a month), and From Dallas to Birmingham, Ala., [illegible] between 1,000 and 20,000 pounds of "conveyor belts" a month).	Tennessee and East Texas.	Better service offered by applicant, and steady increase in business. Industrial hoses are highly susceptible to damage in transit, and are shipped crated or in bales. Shipper contends that other single-line motor carrier services between Dallas and Atlanta are not consistent.	Red Ball.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
187 (482) Porter-McClure Company, Texarkana, Tex. Carpets and padding	From Alabama, Georgia, and Mississippi to Texarkana, Tex. Shipments range from 25 to 1,730 pounds a shipment weekly.	Acme Fast Freight, Bowman, CABY, Cons. Freightways, ETMF, Gordons, Mercury, Northern, Red Ball, Roadway, Ryder, Southwestern, Strickland, Thurston, and Wilson.	Joint-line service inadequate. Needs faster service. Average transit time is now 6 days, including weekends.	Bowman and Jones. Shipper is not satisfied with the services of carriers operating over the Memphis gateway to Texarkana, but does not give any specific complaints concerning them. Transit-time study does not include all shipments during the study period.
188 (483) A.H.F. Ben Hogan Co., Fort Worth, Tex. Golf clubs, golf balls, and golf equipment	From Fort Worth to points in Alabama, Connecticut, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, and South Carolina. Shipments weigh from 14 to 510 pounds a shipment.	Roadway, Mercury, Railway, parcel post, and air freight.	Joint-line service inadequate. Needs faster service. Presently allowing 10 days to 2 weeks lead time.	Bowman, Johnson and Jones. Shipper is aware that Mercury can serve certain Florida points in single-line service. Shipper states that if any other carriers have single-line service to any of the destination States involved, they have not solicited this traffic.
189 (484) Hardwick Etter Company, Sherman, Tex. Cotton gin machinery and related parts	From Sherman to points in Alabama, Georgia, Louisiana, Mississippi, North and South Carolina, and Tennessee. Approximately 1 million pounds moves monthly. Shipper receives from Birmingham, Ala., at Sherman, approximately 500 pounds a week.	Red Ball, Central Freight Lines, Gordons, J.H. Rose, C&H Transp., Jeffries Evans, Air Freight, Dixie-Highway, and Overnite.	Single-line service would be more convenient. Wants second-morning service to Greenville, Miss., and third-morning service to Atlanta and Birmingham.	Red Ball. Traffic is seasonal. Roadway has single-line service to some of the points in the southeast, but shipper has never used its services. Shipper has used Jones' single-line service to Greenville, S.C., but had problem tracing. Hydraulic lift-gate equipment is required.
190 (485) Old London Foods, Dallas, Tex. Cellophane	From Atlanta, Ga., to Dallas. Approximately 5,000 pounds moves monthly.	Roadway and United-Mercury.	To obtain second-morning delivery, and to reduce present lead-time requirement. Presently allowing between 3 and 4 days lead time.	Red Ball. Shipper is aware of the single-line service of Gordons and East Texas between Atlanta and Dallas, but believes that their service through Memphis increases the chances of not getting consistent service. Shipper has tried the single-line service of Transcon but states that it was not satisfactory.
191 (486) Heritage Soap & Candlemakers, Marlin, Tex. Gift items, soap, pottery and candles	From Marlin to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. (Approximately between 2,000 and 5,000 pounds moves a month)	Red Ball.	All shipments beyond Jackson, Miss., require interchange causing delay in delivery. Wants third-morning service to all points.	Red Ball. Shipper presently satisified with service of Red Ball, except that interchange on shipments to Atlanta (one of its best sales area) causes a delay in delivery. Commodities do not require refrigeration, but insulated equipment is helpful.
192 (487) Harvis Electric Manufacturing Company, Itasca, Tex. Florescent light fixtures and plastic lenses and louvers	From Itasca to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Approximately 500 pounds moves weekly, 40,000 pounds monthly, and between 300 and 1,000 pounds weekly to the respective points. Truckload and LTL shipments.	Red Ball, Central and private carriage.	Faster service needed. Commodities are fragile.	Red Ball. A substantial volume of shipper's traffic presently moves in private carriage.
193 (488) Knol Glass, Inc., Palestine, Tex. Glass containers	From shipper's plantsite at Palestine to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Between 9/3/64 and 10/21/66 about 158,016 pounds moved to Atlanta, about 250,000 pounds a year moves to Birmingham, and during summer months about 70,000 pounds a month moves to Greenville. Truckload and LTL shipments.	Red Ball, Dixie, Ryder, and private carriage.	Joint-line service inadequate.	Red Ball. If the authority herein were granted shipper would continue to utilize private carriage, in addition to the available motor common carrier service.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
196. (489) Charles Pfizer & Company, Dallas, Tex. Drugs, cosmetics, and pharmaceuticals	Between shipper's Atlanta, Ga., and Dallas facilities. Approximately 4,000 pounds moves a month to Dallas from Atlanta and twice this volume moves from Dallas.	Red Ball and Gordons.	Not receiving consistent second-day service.	Red Ball. Shipper is aware of other single-line carriers between Atlanta and Dallas, but did not give an explanation why their services were not satisfactory. Appears that traffic from Atlanta is routed by that office.
195. (490) Cunningham Transfer and Storage Co., Houston, Tex. Household goods and crated merchandise	From Houston to Atlanta, Ga., Birmingham, Ala., Greenville, and Jackson, Miss.	Red Ball, Roadway, and Sunset.	Interlining arrangement unsatisfactory. Problems in getting pickups. Carriers wait until 5:00 or 6:00 p.m. to make pickups and by that time their vehicles are almost full and there is not enough room for all of shipper's merchandise and shipper has to wait until next morning to get shipment picked up.	Strickland. Shipper states that some of existing carriers render direct service but that it has to wait to find out if a particular shipment will move direct. No cross-examination.
196. (491) Alloy Tube & Pipe Company, Houston, Tex. Stainless steel pipe and sheet, and aluminum pipe	From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss. Approximately between 100 and 2,000 pounds (8 shipments) moves monthly.	East Texas, Ryder, Mercury, Red Ball, and Morrin.	Shipper has difficulty in obtaining pickups on time.	Strickland. East Texas and Mercury offer single-line service to Jackson. Mercury offers single-line service to Birmingham. East Texas offers joint-line service to Atlanta.
197. (492) Trice Floor Covering, Houston, Tex. Carpets and rugs	From points in Georgia, New Jersey, Pennsylvania, South Carolina, and Tennessee to Houston. Approximately 15,000 pounds moves a month.	East Texas, Roadway, and Ryder.	Need faster service. Average transit time from Dalton to Houston is 9.5 days, including weekends.	Johnson and Bowman.
198. (493) W. H. Curtin and Company, Houston, Tex. Glassware, chemicals, laboratory supplies, and machinery	From Houston to points in Maryland, Florida, Georgia, North Carolina, South Carolina, Alabama, Louisiana, Kentucky, Tennessee, and New Jersey; and from Philadelphia, Pa., New York, N.Y., and Baltimore, Md., to Houston. Approximately 100,000 pounds a month moves inbound and outbound.	East Texas, Morrin, Hoover, Johnson, Red Ball, Roadway, Ryder, Strickland, Transcon and Eastern Air Lines.	Interlining service inadequate. Wants single-line service.	Bowman, Johnson, and Red Ball. Shipper indicates that it has single-line service from Houston to New York and Rockville, Md. There are several carriers with single-line service from Houston to specified points in Florida, and Georgia.
199. (494) General Electric Co., Laminated Products Department, Chemical Metallurgical Division, Houston, Tex. Plastic laminate	From Tampa, Fla., Atlanta, Ga., Charlotte, N.C., and Jackson, Miss., to Houston and from Houston to Atlanta, Birmingham, Ala., and Greenville, and Jackson, Miss. Inbound - approximately 1,500 pounds (20 to 25 shipments) moves a month. Outbound - approximately 1,500 pounds (50 to 60 shipments) moves a month.	Bus lines, East Texas, Mercury, and Ryder.	Needs faster service. Wants second-day delivery on shipments to and from Atlanta, Birmingham, Jackson, and Greenville. Wants second-day pickup at Atlanta on company's Houston to Tampa shipments.	Strickland. Shipper would receive third-day service in a two-line haul from Charlotte and Tampa, if the application were granted.
200. (497) Mechanics Uniform Supply, Inc., Houston, Tex. Cotton wiper rags	From Atlanta, Ga., to Houston. Monthly shipments weigh between 1,300 and 3,500 pounds.	Roadway.	Faster and more consistent service needed.	Morrin.
201. (498) La France Industries, Houston, Tex. Furniture fabrics, sateen, and furniture supplies	From La France, S.C., Atlanta, Ga., Linden, N.J., New York, N.Y., and Boston, Mass., to Houston. Shipments weigh between 2+ and 2,000 pounds.	Bus lines, East Texas, Red Ball, Roadway Ryder, Strickland, and T.I.M.E.	Interlining service inadequate. Needs more dependable service. Wants 7-day service from La France and Atlanta.	Bowman and Johnson. Shipper has made no specific complaints about any particular carrier, except Ryder. Frequency of traffic not given.
202. (499) Western Gear Corp. Shyclimber Division, Houston, Tex. Machinery, machinery parts and scaffolding equipment	From Atlanta, Ga., to Houston and from Houston to Atlanta, Birmingham, Mobile, and Montgomery, Ala. Shipments range between 100 and 1,000 pounds. Two shipments move a month to Atlanta; four a year to Montgomery; and 3 a year to Birmingham.	Roadway, and Ryder.	Needs faster service. Ryder gives late afternoon pickup. Wants 2-day service to and from Mobile, Birmingham and Montgomery.	Morrin.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
203. (508) Gordon's Jewelry Corporation, Houston, Tex. Household goods.	From Houston to points in Alabama, Florida, New Jersey, Pennsylvania, and Tennessee. Approximately 25,000 pounds moved a month.	Bowman, Branch Mtr., Central, Consolidated Copperstate, Consolidated Freightways, Herrin, Howard Hall, MTC, Mercury, MS & P Trucking, Red Ball, Tamiami Freightways, and Transcon.	Need faster service. Allows lead time of 7 days. Wants four-day service to Miami, and points in Florida, Pennsylvania, New Jersey, Delaware and Maryland, and Washington, D.C., and 2-day service to Alabama.	Bowman and Johnson.
204. (501) Hamton Industries, Inc., Houston, Tex. Piece goods and upholstery supplies.	From Burlington, Roanoke Rapids, Concord, High Point, and Kings Mountain, N.C.; Columbus, Ga., Gaffney, McColl, and Batesburg, S.C.; Sunbury, Pa., Midland Park, N.J.; Brooklyn, N.Y., and Jeffery, N.H., to Houston. Approximately 30 shipments move a month weighing between 60 and 2,427 pounds each.	Roadway, Southern Pacific, Strickland, and T & P Railway Co.	Wants faster transit time. Considers the 7 1-day service at present from points in North Carolina, Georgia, South Carolina, New Jersey and Pennsylvania fairly expeditious.	Bowman and Johnson.
205. (502) J. D. Martin Company, Houston, Tex. Electrical wire and cable.	From Pawtucket, R.I., Farmingdale, N.Y., and Irvington, N.J., to Houston. Receives a TL of about 40,000 pounds weekly from Pawtucket and some from Farmingdale. Receives a TL of same amount from Irvington every 2 months. From Houston, between 7/19/66 and 10/4/66 company made, collectively, 40 shipments to points in New York, Connecticut, Alabama, Florida, New Jersey, Washington, D.C., Mississippi, Massachusetts, North Carolina, Pennsylvania, and Maryland. Shipments range between minimum and 1,646 pounds.	East Texas, Herrin, Lee Way, Red Ball, Ryder, Roadway, Sea-Land and Southwestern.	Needs faster transit service. Presently allowing 4 days' lead time to the Carolinas, Georgia, and Florida. Allowing 7 days to Maryland and Middle Atlantic States up through New York and allowing 7 days to Houston.	Bowman and Johnson. It appears that shipments from Pawtucket, R.I. are controlled by the shipper, not J.D. Martin Co., agent. It also appears that shipments from Irvington, N.J. are presently moving in private carriage.
206. (503) Star Corp. and Ohio Injector Co., Houston, Tex. Pipe valves and fittings.	From Houston to Greenville and Jackson, Miss., Birmingham, Ala., Atlanta, Ga., and Tampa, Fla. Approximately 42 to 50 shipments move a month weighing between 200 and 1,200 pounds each.	Ryder, and Mill & Mill	Faster, and more reliable service needed. Wants second-day service to all destination points.	Strickland. Braswell and Red Ball serve Jackson, Miss., in single-line service from Houston.
207. (504) Finger Furniture Company, Inc., Houston, Tex. Furniture, appliances, and related household items.	From points in Florida, Georgia, North Carolina, and South Carolina, to Houston. Approximately 20,000 pounds moves a month.	Aaa-Fast Freight, T and C, Central, Dickeson Harper, Perkins, Northern, Piedmont, Norton-Ramsey, ET&WNC, Thurston, Cole, Reliable Trkg. Roadway, Ryder, Red Ball, Mo. Kansas NE Co., Southern Pacific, W & L Mtr. Lines, Shamrock, and VAN.	Needs faster service. Greater chance of damage in joint-line service.	Bowman and Johnson. No complaint against any specific carrier presently utilized, except Roadway.
208. (505) George E. Failing Company, Houston, Tex. Air compressor parts, air cylinders, drill pipes and related oilfield equipment.	Between Atlanta, Ga., and Houston. Shipments weigh between 2 and 1,500 pounds, and move from Atlanta once or twice a week.	Bus Lines, air lines, East Texas, Herrin, Roadway, and Ryder.	Would be an improvement over present service. Presently allows 5 days lead time. Wants proposed 2-day service.	Herrin. Shipper states that present service is acceptable. It also appears that witness 69. (187), under Georgia heading, the Atlanta store manager for the same shipper supported the application of Strickland for similar authority.
209. (506) Mechanics Uniform Supply Company, Houston, Tex. Cotton wiper rags.	From Atlanta, Ga., to Houston. Monthly shipments ranging between 2,300 and 3,500 pounds.	Roadway.	Faster more consistent service needed. Wants 2-day service from Atlanta to Houston. Average transit time is now 6 days, including weekends.	Bowman and Johnson. Witness 200. (497), under Texas heading, testified on behalf of same shipper supporting Herrin. The same commodities and points are involved. This witness relies on same exhibit in which shipper failed to show that transit time of existing carrier was inadequate.
210. (507) Canteen Corp., Houston, Tex.	See testimony of witness 10. (332), under Louisiana heading.			Bowman and Johnson Examiner admitted into evidence an exhibit sponsored by witness No. 507 establishing the date on which traffic was received.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
211. (5507) Daniel Radiator Corp., Houston, Tex. Radiator cores	From Houston, Fort Worth, and Dallas, Tex., to Atlanta, Ga., and Philadelphia, Pa.; and from Lancaster, Pa., and Perth Amboy, N.J., to Houston. In 3 months in 1966 50,650 pounds (15 shipments) moved to Philadelphia.	Brown Express, East Texas, Johnson, Kenney-Consolidated, Mushroom Transport, Roadway, Springmeier Ship., Strickland, Transcon, and Wooleyhan	Needs faster service. On 15 shipments average transit time was 9.4 days including weekends. Wants 3- or 4-day service.	Bowman and Johnson. Shipper is aware of two or three single-line carriers from Houston to Philadelphia. Witness 119. (374) under Tex. heading, on behalf of same shipper supported Strickland. It appears that Ryder has single-line service to Philadelphia from Houston.
212. (510) General Electric Company, Distribution Assemblies Department, Construction Industries Division, Houston, Tex. Electric controller and related parts	From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss., and points in Arkansas. Approximately between 16,000 and 20,000 pounds of TL and LTL shipments moves weekly.	Morris, Red Ball, Mercury, and Ryder.	Needs faster service. Shipper has received complaints from customers.	Strickland. Morris serves points in Arkansas; Red Ball serves Greenville, and Jackson; Mercury serves Birmingham; and Ryder serves Atlanta. Shipper has only made general complaints against existing services.
213. (515) Jim-Pah, Inc., Houston, Tex. Food Packaging machinery and component parts and accessories	From Houston to points in Alabama, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia. Shipments weigh between 24 and 12,000 pounds, and a total of 370,000 pounds moved to the destination States during a six-month period in 1966.	Roadway, Ryder, Consolidated, Morris, Strickland, Yellow Transit, Mercury, and Lee Way.	Needs faster service, and machines subject to damage in two-line service.	Bowman and Johnson. Roadway can render shipper single-line service.
214. (516) Robert Butler Company, Division of R.B. Butler, Inc., Bryan, Tex. Iron and steel articles and metal buildings	From Birmingham, Ala., to points in Texas. Monthly LTL and TL shipments weigh between 8,750 and 150,000 pounds.	Eagle, Central, and Red Ball.	Joint-line service inadequate, damage to products, and needs the service of a carrier with a local terminal for expedited pickups and deliveries.	Red Ball. Shipper needs the dependable service of a carrier to make scheduled pickups and deliveries so that it can arrange for unloading. Red Ball has terminal near shipper and has been found dependable.
215. (516) A.I.M., Inc., Houston, Tex. Materials handling equipment	From Augusta, Ga., to Houston. From Somerville, Mass. to Houston, Beaumont, Orange, and Texas City, Tex. and, from Springfield, Tenn., to Houston. Approximately 3,000 pounds (three to four shipments), moves a week.	Strickland, Dawson, East Texas, Ryder, and Burnett.	Needs faster service. Wants single-line service.	Bowman and Johnson. Unsupported complaints.
216. (517) Wright Light, Inc., Houston, Tex. Fluorescent light fixtures and parts	From Houston to Atlanta, Ga., and Jackson, Miss. Approximately between 200 and 1,500 pounds moves two to three times a month to Atlanta and approximately between 200 and 1,500 pounds moves twice a week to Jackson.	Red Ball, Mercury, East Texas, Ryder, and United.	Needs faster service. Wants 2-day service between Jackson and Houston and 2-day service from Houston to Atlanta.	Morris. No specific complaint against any particular carrier.
217. (518) Anchor Wire Rope Company, Houston, Tex. Wire rope and wire rope assemblies	From Houston to Atlanta, Ga., and Jackson, Miss.; and from Jackson, Miss., to Houston. Between 200 and 3,000 pounds (approximately three shipments) move a week. (Truckload and LTL shipments.)	Red Ball, Mercury, Roadway, and Brownell.	Needs faster, more dependable service. Wants second-morning service from Houston to Atlanta and 1-day service between Jackson and Houston.	Morris. It appears that Roadway, East Texas, and Mercury offer single-line service to Atlanta. Red Ball is the only existing service against which specific complaint was made.
218. (519) The Stephens Company of Houston, Tex. Carpets, tile and fixtures	Inbound to Houston from points in Georgia, Pennsylvania, New York, South Carolina, Florida, and Tennessee. Company received a total of 27 shipments during a 3-month period in 1966 from the origin States with each shipment weighing between 21 and 32,650 pounds.	East Texas, Ryder, and Roadway.	Wants 3-day service from New York, and Pennsylvania area. Wants 2-day service from the Carolinas, and Tennessee. Wants third-day service from Florida. Average transit time from Tennessee points is 4.9 days; from Georgia 5 days; from Florida 7 days; from New York 16 days; and from Pennsylvania is 10 days. (No figures given for other points.)	Morris, Bowman, and Johnson. Shipper has not tried Ryder's single-line service from New York and Philadelphia. Even if the authority were granted, it appears that neither Morris nor Johnson could render single-line service from points in Tennessee or Georgia.
219. (520) F. & G. Merchandising, Inc., Houston, Tex. Advertising materials sales forms, daily report forms and other printed matter	From Houston to Atlanta, Ga., Jackson, Miss. Birmingham and Mobile, Ala. Shipments weigh between 50 and 200 pounds.	Greyhound and R.E.A.	Greyhound has no pickup and delivery service. Shipper is not satisfied with transit time of existing service. Wants 1-day service to Jackson; 2-day service to Atlanta, and Birmingham and first afternoon service to Mobile.	Morris. Shipper has used only the service of Greyhound and R.E.A. in the 3 years it has been in business. Frequency of traffic not given.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
220. (521) Phil Rich Fan Manufacturing Co., Inc., Houston, Tex. Electric fans.	From Houston to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Monthly shipments of approximately 17,500, 35,000, and 35,000 pounds, respectively.	Ryder, Red Ball, East Texas, and Central.	Complaints from customers regarding transit time. Prefers single-line service. Wants proposed second-day service to Greenville, Birmingham, and Atlanta. Needs faster service.	Red Ball. Shipments are seasonal. Shipper states that it receives occasional shipments from Birmingham, but no volume is given. Red Ball.
221. (522) Michelin Tire Corp., Houston, Tex. Tires.	From Houston to Greenville, Miss. Between February and October 1964, 23 shipments moved to Greenville. Each shipment weighing about 775 pounds.	Red Ball interlining with Delta.		
222. (523) Curtis 1000, Inc., Houston, Tex. Envelopes.	From Atlanta, Ga., to Houston and to points in Louisiana and Arkansas. Approximately 313 pounds moves twice a week.	Jack Hall is used in joint-line with Red Ball.	Needs faster service. Joint-line service inadequate. Wants single-line service.	Red Ball.
223. (524) White Manufacturing Company, Houston, Tex. Pipe fittings and chemical compounds.	From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Monthly shipments of approximately 6,000, 4,000 and 1,000 pounds, respectively.	East Texas, Ryder, and Red Ball.	It has a competitor in Memphis, Tenn., giving overnight service to customers in Greenville, Miss., thus, it needs faster, single-line service to Greenville to compete.	Red Ball. Shipper's primary concern here is Greenville, Miss. East Texas already serves shipper in single-line service to Atlanta and Birmingham, but shipper desires additional service to these points.
224. (525) Anchor Fence Division, Anchor Post Products, Inc., of Texas, Houston, Tex. Chain link fencing and related items.	From Houston to Birmingham, Ala., and Greenville, Miss. Approximately 700 pounds (two shipments) moves a week.	Mercury and Red Ball.	Delay in pickups and limited loading area. Wants to have regular pickups each day.	Red Ball. Shipper produced no specific evidence to show inadequate service.
225. (526) Thermal Engineering Corp., Houston, Tex. Air-handling units.	From Houston to Atlanta, Ga., Birmingham, Ala., and Jackson and Greenville, Miss. Approximately 9,000 pounds (300 shipments) moves annually.	Brassell, Red Ball, Roadway, and East Texas.	Poor pickup service. Presently allows 7 to 8 days load time to Southeastern points.	Strickland. No specific complaint against any specified carrier.
226. (527) United Cotton Goods Co., Inc., Sequin, Tex. Cotton materials.	From Cheraw, Greenville, Lyman and Wallace, S.C., Rocksboro and Roanoke Rapids, N.C., Atlanta, Griffin, Dallas, La Grange, and Thomaston, Ga., and Fairfax, Ala., to Sequin. Approximately 100 shipments move a month weighing between 600 and 3,000 pounds a shipment.	Ryder, Harder, Central, Roadway, Thurston, Georgia Highway, Herrin, and East Texas.	Joint-line service causes damage to products and is too slow. Wants 2- or 3-day service between Atlanta and San Antonio, Tex., which would be Strickland's portion of the interline.	Strickland. Shipper does not appear to control routing. It stated that existing service "has been good."
227. (529) McAs Corporation, McGregor, Tex. Portable building, portable building accessories, and signs.	From Atlanta and Statesboro, Ga., Vicksburg, Miss., and Magnolia, Ark., to McGregor, and from McGregor to points in Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Inbound - about 500 pounds a shipment with 100 shipments a month. Outbound - 200 shipments a month consisting of LTL and TL.	"All available" Red Ball, East Texas, and Ryder.	Needs faster service. Wants overnight service from Dallas to Jackson and second-day service to Atlanta and Birmingham.	Strickland.
228. (530) Vul Cap Equipment Company, San Antonio, Tex. Curing tubes, tire repair materials, rubber scrap and tire lathes.	From Atlanta, Ga., and Asheville, N.C., to San Antonio. Approximately between 100 and 1,000 pounds a shipment ranging from 1 to 15 shipments a month. Outbound traffic moves to Florida two or three times a month. The shipments weigh about 1,500 pounds.	East Texas, Roadway, Merchants, and Ryder.	Damage to products and difficulty in collecting claims. Average transit time is 6 days. Wants second-morning service or 3-day service. One of shipper's customers has requested that Ryder not be used on this customer's traffic to Miami, Fla.	Strickland. Ryder and Roadway serve shipper in single-line service.
229. (531) Lone Star Beer, San Antonio, Tex. Folding cartons.	From Atlanta, Ga., to San Antonio. Company receives 1 truckloads each month from Atlanta.	Strickland, S & P Railroad, and Roadway.	Needs better pickup service. Wants 2-day service between Atlanta and San Antonio.	Strickland. No specific complaints. Shipper wants backup service.
230. (532) American Porcelain Enamels, Inc., Houston, Tex. Porcelain ware.	From Houston to points in Georgia, Alabama, Mississippi, Florida, and Tennessee. Shipments weigh between 100 and 10,025 pounds.	Red Ball, Herrin, Ryder, and Mercury.	Needs faster service. Joint-line service inadequate because product susceptible to damage. Wants second-day delivery to Birmingham and Atlanta.	Bowman and Johnson. Frequency of traffic not given.
231. (533) Lieberman, Floresville, Tex. Clothing.	From points in Georgia, Virginia, West Virginia, and Tennessee to Floresville. Shipments weigh between 100 and 500 pounds with 5 to 6 shipments a week.	East Texas, Lange, Tamiami, T.I.M.E., Texas Oklahoma, Brown, Bowman, Georgia Highway, Thompson, and Baggett.	Needs faster service. Presently allows 2 to 3 weeks load time. Wants 2-day transit time from Atlanta and Birmingham to San Antonio.	Strickland. No specific complaints.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
232. (534) G. A. Stowers Furniture Co., Houston, Tex. Home furniture carpets and draperies	From Ranboro, Hickory, Morganton, Mocksville, Lenoir, Taylorsville, and Leaksville, N.C., Montgomery, Ala., Jacksonville, Fla., New Brunswick, N.J., and Auburn and New York, N.Y., to Houston. From 1/18 through 10/5/56, 109 shipments weighing 19,388 pounds were received from these points. Shipments weigh between 15 and 1,495 pounds.	Ryder, Roadway, Harrin, East Texas, W & L, Stott Davis, Strickland, and rail service.	Needs faster service to deliver special orders. Average transit time 6 days, including weekends. Wants second-day delivery from Carolinas and third and fourth day delivery from Knoxville and the east coast. Wants 2-day service from Florida and Georgia points.	Johnson and Bowman. Rail is shipper's main form of transportation. Frequency of traffic not given.
233. (535) Walgreen Drug Stores, Chicago, Ill. Clothing, towels, and other household items.	From points in Georgia, Alabama, Mississippi, North Carolina, South Carolina and Tennessee, to shipper's Houston, Tex. warehouse or directly to stores. Approximately between 50,000 and 75,000 pounds moves monthly.	Harrin, Eastern Texas, Roadway, and Ryder.	Needs faster service (would like transit time under 5 days). It now receives average transit time of about 6 days.	Johnson and Bowman.
234. (536) Hughes Tool Company, Houston, Tex. Industrial rock bits	From Houston and Dallas, Tex., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, Connecticut, Maine, New York, and Pennsylvania. Shipments weigh between 351 pounds and 4,791 pounds.	Roadway, Strickland, Mercury, Transcon, and East Texas.	Joint-line service inadequate.	Johnson and Bowman. Shipper states that he is aware of single-line service to several of the destination points named, including Roadway to Pennsylvania, but believes competition is good.
235. (537) Wilson Supply Company, Houston, Tex. Oil field supplies, fittings, and valves.	From Birmingham, Ala., Charlotte, N.C., Philadelphia, Pa., and New Haven, Conn., to Houston. Receives a shipment from Birmingham every 45 to 60 days, weighing about 500 pounds; from Charlotte every 45 days weighing about 250 pounds; from Philadelphia every 45 days weighing about 500 pounds; and from New Haven twice a year weighing about 150 pounds each.	Acme, Ryder, and Shippers and Receivers Association.	Needs faster service. Wants 3-day service out of Birmingham, 3-day service out of Charlotte, 4-day service out of Philadelphia and 6-day service out of New Haven.	Bowman and Johnson. Shipper admits that it has more than one single-line carrier operating between named origin points and Houston.
236. (538) Billy Uniform Co., Houston, Tex. Industrial clothing.	From points in Alabama, Georgia, New York, Massachusetts, Pennsylvania, South Carolina, Virginia, North Carolina, and Maryland, to Houston. Total volume of 98,391 pounds for period January 1965 to April 1965 with 154 shipments.	Pilot, Eastern, Fuller, Transcon, Acme, Roadway, Standard, Ryder, Perkins, Overnite, T.I.M.E. All States, Duncan, ETAMSC, Cooper, Thurston, Jack Cole, Dixie, Floyd & Beasley, Mason & Dixon, Georgia Hwy., CP&N, Southern, Carolina, Catawba, and Turner.	Needs faster service. With interline service shipper receives between 1 and 13-day service, with Roadway's direct service it receives between 2- and 10-day service, and with Ryder's direct service it receives between 3- and 7-day service.	Bowman and Johnson. Transit study includes all traffic during the study period.
237. (539) The Three Weavers, Houston, Tex. Woolen and orlon yard, and handloomed fabrics.	From Philadelphia, Pa., and Sanford, N.C. to Houston. Shipments weigh between 63 and 1,391 pounds.	Strickland, Roadway, and Springmaier.	Needs more consistent service. Wants faster service. Average transit time 7.1 days, including weekends.	Bowman and Johnson. No specific complaint. Transit time does not include all shipments during the study period.
238. (546) Pure Oil Co., Smiths Bluff, Tex. Petroleum products, in drums and cases.	From Smiths Bluff to points in Alabama, Florida, Tennessee, and to Greenville, Miss. Monthly TL shipments of approximately 900,000 pounds.	Ryder and Baggett.	Faster service.	Baggett, Deaton, Bowman, and Red Ball. It appears that Ryder and Baggett presently serve most of the points in single-line or joint-line service.
239. (553) Houston, Tex.	See shipper under Alabama heading.			
240. (556) Baytown, Tex.	See shipper under N.C. heading.			
241. (631) Standard Bag Company, Houston, Tex. Cotton piece goods.	From points in Georgia, North Carolina, and South Carolina, to Houston. About 200,000 pounds moves annually.	Roadway, Ryder, Bowman, United Mercury, Red Ball, and Strickland.	Wants faster service. Wants third-day service. The average transit time is 6 days, including weekends. Presently allows between 5 and 7 days lead time.	Bowman, Johnson, and Red Ball. No specific complaints. Transit time includes all shipments made during period.
242. (634) Aycock Distributing Co., Texarkana, Tex. Sporting goods and general hardware.	From Texarkana to points in Arkansas; from Birmingham, Ala., to Texarkana. Shipments weigh between 100 and 10,000 pounds.	Southwestern, and bus lines	Wants faster service.	Strickland. No specific complaints. Frequency of traffic not given.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
243. (697) H.D. Lee Co., Shawnee Mission, Kans. Clothing.	(a) From shipper's facilities at Sulphur Springs, Tex., and Chamblee (Atlanta), Ga., to points in Georgia, Alabama, Mississippi, and other eastern and southeastern States. (b) From Chamblee to Texas. (c) From points in the southeast to Sulphur Springs, and from mills located in Texas to Boaz, Ala. (d) From shipper's facilities at Boaz to Sulphur Springs. Monthly shipments weigh between 29,869 and 39,827 pounds.	Red Ball, Gardens, Bee Line, Dixie, and Southwestern.	Needs a carrier, in addition to Southwestern, to service Sulphur Springs, Tex.	Red Ball. No complaint except that only one carrier serves Sulphur Springs.
244. (708) Co-operative Rose Growers, Inc., Tyler, Tex. Rose bushes	From Tyler to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Approximately 5.2 million pounds moves yearly.	Red Ball, and Southwestern.	Joint-line service inadequate.	Red Ball. It appears that East Texas can serve shipper in single-line service to Atlanta and Birmingham. The involved commodities are perishable. No specific complaints. Red Ball.
245. (722) Mann Manufacturing Co., Amarillo, Tex. Rebuilt automotive parts.	From Amarillo to Atlanta, Ga., and return. Inbound shipments from Atlanta average about 1 a week. Shipper periodically transports machinery to Atlanta. During December 1966 six shipments were received from Atlanta with a total weight of 21,626 pounds.	Red Ball interlining with Cole and Transcontinental	Desires faster service. Wants 2-day service to Atlanta.	
246. (736) Slurry Company, Greenville, Tex. Inbound-cotton piece goods. Outbound-children's clothing.	Inbound - from points in North Carolina, South Carolina and Atlanta, Ga., to Greenville. (100 shipments a month), and outbound - From Greenville to points in Arkansas, Louisiana, Mississippi, Alabama, and Georgia. (shipments are LTL weighing from 100 to 500 pounds).	Central and Red Ball.	Present service too slow. Average transit time is 5 to 7 days. Wants 3-day service from Atlanta to Dallas.	Strickland and Bowman. Bowman and Strickland can presently render a joint-line service from the Carolinas to Greenville using the Memphis gateway. Ryder can serve Henderson, N.C. direct.
247. (743) L. O. Hammons Home Store, Paris, Tex. Suits, shirts and slacks	From Atlanta and Bremen, Ga., to Paris. Receives three to four shipments a week from Atlanta, each is LTL and weighs about 50 pounds.	Red Ball, T & P, S & P, Texas Pacific, Southern Pacific, RSA, Roadway, and Gardens.	Wants faster service.	Red Ball. Roadway can offer direct-line service from Atlanta to Paris. Shipper does not designate the carrier.
248. (747) Texas Tempered Glass Company, Houston, Tex. Window glass	From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships about 20,000 pounds a month to the southeast in (LTL).	Roadway, Red Ball, and Mercury.	Wants single-line service as there is less handling of the glass. Has damage problems with Roadway.	Red Ball. Shipper is routinely satisfied with Mercury's direct service to Birmingham.
249. (769) Smith Tank and Equipment Company, Inc., Tyler, Tex. Tanks and tank parts.	From Atlanta and Commerce, Ga., to Tyler. Shipper receives 3 tons a month.	Red Ball, Northeastern, Southwestern, and ETMT.	Wants faster service because of its limited storage facilities.	Red Ball. ETMT can serve Tyler directly from Atlanta.
250. (750) Houston, Tex.	See shipper under Louisiana heading.			
251. (758) Tyler Pipe and Foundry Company, Tyler, Tex. Cast iron pipe and fittings	From Tyler to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships LTL lots of about 400,000 to 450,000 pounds collectively a month to the above area. Each shipment averages about 775 pounds.	Red Ball, ETMT, Roadway, Consolidated, Southwestern and Missouri Pacific.	Wants faster transit time because pipes go directly to plumbers who generally have no inventory.	Red Ball. Roadway offers single-line service to Atlanta. Shipper has the direct service of two irregular route common carriers (50 percent of the tonnage moves by them).
252. (763) Carrier Air Conditioning Company, Tyler, Tex. Air-conditioners, coolers, freezers, furnaces	From Tyler to Greenville, Miss., Atlanta, Ga., and Birmingham, Ala. Has one shipment a week to Atlanta and Greenville and one shipment every 2 weeks to Birmingham. The average weight of these shipments is 1,000 pounds. Also ships 15,000 pounds a month over Atlanta and Birmingham gateways.	Red Ball, ETMT, and Roadway.	Single-line service would be more convenient for it would cut transit time and lessen the chance for damage.	Red Ball. Shipper only had minor complaints about the service.
253. (765) Ryle Manufacturing Company, Wichita Falls, Tex. Chain and sprocket drives	From Wichita Falls to Atlanta, Ga. (as a gateway). Ships 2,000 pounds a month to Atlanta and about 6,000 pounds a month to Atlanta as a gateway for interchange. Average weight of shipment is 250 pounds.	Central, Red Ball, Merchants, ICI interchanging with Ryder, and Roadway.	Desires a single-line service to avoid trucking and delay problems.	Red Ball.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
254. (775) Lobue Manufacturing Company, Longview, Tex. Lead binders, blends, tail chains and hooks	From Longview to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships in LTL lots weighing 450 to 500 pounds.	Red Ball, and CTAV.	Would prefer the convenience of having two carriers and a single-line service.	Red Ball. Shipper has no complaints with present service.
255. (777) James F. Kane Company, Amarillo, Tex. Valve, pipe, and tube fittings	From Birmingham, Ala., to Amarillo. Receives eight shipments a month, each weighing about 1,000 pounds LTL.	Transcon, CTAV, interlining with I.C.N., Gordons, and Red Ball.	Wants second-morning service out of Birmingham as RX proposes. Allows a lead time of 2 weeks. Wants proposed 2-day service.	Red Ball. Transcon offers single-line service from Birmingham to Amarillo.
256. (780) S Basil Brothers, Inc., Jacksonville, Tex. Clothing	From Atlanta, Ga., Birmingham, Ala., as gateways to points in Texas. In June 1961 company received 883,561 pounds at its Jacksonville warehouse and received same amount collectively at its 51 stores located at other points in Texas during same period. This is representative of company's inbound monthly traffic.	Red Ball, M.F.T. SAV, and S.P.T.	Believes Red Ball will give faster service. Wants 1-to-2-day faster service.	Red Ball
257. (779) King Candy Company, Fort Worth, Tex. Candy	From Fort Worth to points in Mississippi. Ships between 1,000 and 2,000 shipments a year to above points. Each shipment weighs between 100 and 150 pounds (LTL).	Red Ball and Jones.	Wants Strickland's second-morning service. Too many delayed shipments with present service. Presently allowing 9-to-10-day lead time to Jackson.	Strickland. Shipper has need refrigerated service during the summer months. Strickland cannot offer such service. Present delivery time is 5-to-10 days.
258. (783) (a) Texas Refinery Corp., Fort Worth, Tex. (b) American Lubricant Co., Dayton, Ohio (c) Royal Oil Co., Fort Worth, Tex. Petroleum oils and greases	From Fort Worth to points in Alabama, Georgia, Florida, Tennessee, Virginia, North and South Carolina, Maryland, Pennsylvania, Delaware and the New England States. Traffic moves in LTL lots with each shipment weighing about 800 pounds.	TSP, Red Ball, Mercury, Brassell, Transcon, Roadway, Strickland, Central Georgia Highway, Overnite, and Bowman.	Wants a single-line service to ease tracing problem and lessen the amount of damage.	Bowman and Johnson. Has single-line carriers to most points in Alabama and Georgia. Has one single-line service to South Carolina. Has Strickland single-line service to Maryland and Delaware. Service to Memphis is described as satisfactory.
259. (784) Benson-Kilpatrick, Inc., Greenville, Tex. Lingerie	From points in North and South Carolina to Greenville. Receives 30 to 40 shipments a month weighing from 100 to 2,000 pounds (LTL).	Roadway interchanging with Red Ball at Dallas, Tex. Thurston with CTAV, Overnite, and Southwestern.	Wants faster service. Allows 7 days' lead time from the Carolinas.	Strickland. Strickland has single-line authority from Memphis to Greenville. This application concerns Atlanta gateway. Shipper indicates that the present service can be improved. Shipper had not heard of Ryder or Bowman.
260. (797) Industrial Steel Building Company, Tyler, Tex. Steel building and parts	From Birmingham, Ala., to points in Texas. Received about 450,000 pounds in 1960. Shipments ranged in size from minimum amounts to TL lots. Expected to ship almost 600,000 pounds in TL lots in 1961, and about 10,000 pounds of LTL to points in east Texas.	East Texas, Southwestern, Eagle, Red Ball, and Gordons.	Delivery time is very important because most shipments move to jobsites. Wants faster and a more scheduled service.	Red Ball. East Texas serves the following Texas points direct from Birmingham; Marshall, Tyler, Longview, Henderson, Lufkin, Kilgore, Carthage, Turnertown, and Texas.
261. (801) Jasper Fiber Products, Inc., Jasper, Tex. Corrugated-solided paper fiber products. Inbound-chemicals in drums.	From Jasper to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships 100 to 1,000 pounds. No time period mentioned. From Atlanta, Ga., to Jasper (250 pounds two times a month).	Santa Fe, Red Ball, Ryder, and Roadway.	Wants faster service. Shipper wants second-morning service to Birmingham and Greenville, third-morning service to Atlanta.	Red Ball. Depot routes the inbound traffic and they do not support Red Ball.
262. (804) Graham Magnetics, Inc., Graham, Tex. Magnetic tapes	From Graham to Atlanta, Ga., and Birmingham, Ala. Shipper could not give figures on frequency or volume of shipments moving to Atlanta. In a 1-month period three shipments (LTL) were sent to Birmingham weighing between 48 and 798 pounds.	Red Ball, ICX, and Morgan.	Wants a faster dependable single-line service to Atlanta, Birmingham, and Greenville gateways.	Red Ball. Computer waiting time may cost $300.00 an hour and, therefore, delays in delivering tape must be avoided. Shipper is presently moving this traffic by air.

Summary of evidence of supporting shippers—Continued

TEXAS—Continued

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
263. (814) Texas Coffin Co., Waco, and Amarillo, Tex. Piece good and casket handles.	Inbound from Atlanta, Ga., to shipper's facilities at Waco and Amarillo. Between January 1966 and October 1966 shipper received over 100 shipments from Atlanta weighing from 85 to 1,000 pounds with an average weight of 300 pounds.	Red Ball, Red Arrow, S.W. and Transcom.	Wants faster deliveries.	Red Ball. Shipper had never heard of Roadway and was unaware of the fact that it can serve Waco and Amarillo from Atlanta.
264. (827) Mocona Root Company, Inc., Mocona, Tex. Footwear.	From Mocona to points on Arkansas Highway 82 and to points in Mississippi, Alabama, and Georgia. Shipments are LTL weighing from minimum to 4,500 pounds.	Central.	Wants faster delivery.	Strickland. Supports Strickland from Dallas to destination points. Shipper will use Central from Mocona to Dallas. Strickland proposed service is no different from several existing carriers with authority out of Dallas. Shipper already has a two-line service.
265. (838) Stores	See shipper under Oklahoma heading.			
266. (829) Henaley Equipment Inc., and Henaley Electric Steel Inc., Dallas, Tex. Carbon and steel castings.	From Dallas to Atlanta, Ga., and Birmingham, Ala. Ships two to three times a week to Atlanta. Shipments weigh a minimum to 2,500 pounds. It ships two to three times a week to Birmingham with an average weight of 2,000 pounds.	Transcom, Mercury, ETMF, and Red Ball.	Existing service is inconsistent.	Red Ball. No specific complaints or examples of inconsistencies set forth.
267. (832) Industrial Supply Co., Wichita Falls, Tex. Oil and gas valves	From Birmingham, Ala., to shipper's stores at Wichita Falls, Electra, Kamay, Ferryton, and Graham, Tex. Collectively, about 8,000 pounds moves monthly to the destination points.	Mercury, Red Ball, ICK, and Merchants	Current service is too slow. [illegible] lead time of 10- to 14 working days from Birmingham.	Red Ball. It appears that shipper does not always specify routings. No definite complaints or examples of inadequate service shown.
268. (838) Whitehouse Plastics Corporation, Everman, Tex. Liquid plastic.	From Marietta, Ga., to Everman. Receives 3 shipments a month with an average weight of 7,500 pounds a shipment. From Everman to unnamed points in the Southeast. No volume figures presented.	Atlanta Motor, Ryder, Brown, Central, Strickland, Johnson, Houston, Roadway, STS, DOR, and Braswell.	Present service is too slow. Wants a faster joint-line service. Average transit time is 6.8 days, including weekends. Wants 2-day service.	Strickland. Roadway serves Marietta directly and offers 2-day service to Everman.
269. (839) The Southern Supply Company, Dallas, Tex. Hardware, and agricultural implements.	From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volume of LTL shipments move to Dallas from Birmingham (340,000 pounds), from Atlanta (100,000 pounds), and from Columbus (100,000 pounds).	Transcom, Mercury, Red Ball, Dixie, and Georgia Highway.	Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time.	Red Ball. Shipper has limited dock space.
270. (841) Mary of Pudden Hill, Greenville, Tex. Pecan fruit cakes.	From Greenville to points in the Southeast. Total shipments in 1966 equaled 110,000 pounds but this is to all points in the United States. Each shipment weighs between 20 and 200 pounds. Only 9 to 10 percent of all sales to the southeast. Shipper estimates that about 10,000 pounds were shipped into the Southeast in 1966 in about 1,500 individual shipments.	MEA, Red Ball, Central, and Tamiami.	Most of shipments occur the last quarter of each year. Needs faster and reliable deliveries for Christmas rush. Carriers have lost shipments in the past.	Bowman.
271. (842) T.A. Littleton & Sons, Wichita Falls, Tex. Knocked-down steel buildings.	From Birmingham, Ala., to points in Texas. Receives 30,000 pounds a month from Birmingham. Shipments weigh 9,000 to 30,000 pounds.	Mercury, Campbell, ICK, Texhoma, Central, Red Ball, and Eagle.	Wants single-line service to reduce delays because shipper usually has a completion deadline to meet. Allowing 7- to 10- days lead time out of Birmingham. Wants proposed third-morning service.	Red Ball.
272. (853) Rangaire Corp., Cleburne, Tex. Air-conditioning units.	From Cleburne to points in Arkansas, Mississippi, and Alabama. Ships up to 1,000 shipments a month to above destinations. Each shipments weighs about 1,000 pounds.	Central, Strickland, Jones, and Red Ball.	Wants a faster joint-line service.	Strickland. There are several existing carriers which can provide the [illegible] service in either single or joint-line operations. Proposed service would still give shipper a three-line haul.
273. (887) San Antonio, Austin, Fort Worth, Irving, Garland, and Corpus Christi, Tex.	See shipper under Louisiana heading.			
274. (889) Sulpher Springs, Tex.	See shipper under Arkansas heading.			
275. (917) 30 stores	See shipper under Pennsylvania heading.			

Summary of evidence of supporting shippers—Continued

VIRGINIA

Shipper, location and commodities	Origins, destinations, volume, type and frequency of traffic	Existing services utilized	Reason for supporting application	Application supported and remarks
1. (325) A. H. Robins Co., Richmond, Va. Pharmaceuticals	From Richmond, Va., to points in Mississippi and to a warehouse in Dallas, Tex. TL traffic to Dallas, LTL to Mississippi).	Joint-line to Mississippi. Originating carriers are Bowman, Johnson, etc.[1] Overnight. Connecting carriers are Viking, Campbell, and West. Dallas traffic is handled in joint-line service by Morrin, Nelson, New Dixie, ETMF, Bowman, and Southwestern.	Complained of slow deliveries. Shipper has expanding markets It needs emergency expedited service. Shipper wants 2- or 3-day single-line service.	Bowman and Johnson. Roadway has single-line service to Dallas, but shipper refuses to use it because it failed to make pickups in past.
2. (326) Polk Miller (Products Corporation, Richmond, Va. Dog drugs, insecticides, food supplements, printed matter, soap, and cleaning compounds.	From Richmond between 12/31/65 and 7/25/66, shipper had movements to Kansas City, Sedalia, Springfield, St. Louis, and Affton, Mo.; Fort Polk and Monroe, La.; Topeka, Kans.; Houston and Dallas, Tex. and Little Rock, Ark., LTL and TL shipments.	Bowman originates shipper's traffic and interlines it at Memphis, Tenn., and Birmingham, Ala. Dixie also originates the traffic and interlines it at Atlanta, Ga. Gorpman	Wants 3- or 4-day service on TL shipments and 4- to 5-day service on LTL shipments. Wants direct service to reduce damage.	Bowman and Johnson.
3. (327) Titmus Optical Co., Inc., Petersburg, Va. Lens blanks, spectacle frames, and optical instruments.	From Petersburg during June and July 1966 shipper had movements (represents 85 percent of all movements handled by motor common carriers to the involved territory during this period) to Dallas, Beaumont, McAllen, San Antonio, Corpus Christi, Fort Worth, Crosby, Amarillo, and Longview, Tex.; Ada and Oklahoma City, Okla., Little Rock and North Little Rock, Ark.; Shreveport and New Orleans, La., and Jefferson City and Kansas City, Mo.	Bowman with connecting carriers and parcel post.	Has experienced difficulties in meeting competition due to delays in transit. Desires direct service to reduce damage.	Bowman and Johnson.
4. (869) Clark Gum Company & Phillip Morris, Inc., Richmond, Va. Tobacco products	From Richmond to Shreveport, La.; Little Rock, Ark.; Houston and Ft. Worth, Tex., and Kansas City, Kans. During January 1967 shipper had nine shipments to the above points, each shipment weighed about 25,000 pounds.	Bowman, Roadway, Overnite, Transcon.	Wants improved service. Claims Roadway's loaders are not reliable. On TL shipments lead time of 3 days to Shreveport is allowed, 3 to 4 days to points in Texas, Arkansas, and Missouri. Shipper has had difficulty in obtaining timely pickup service and in having interlining carrier accept its traffic at specified gateways.	Bowman. Several interline combinations available to shipper.
5. (888) Richmond Engineering Co., Inc., Richmond, Va. Water heaters and tanks.	From Richmond, Va., to points in Texas, Louisiana, and Mississippi. From 2/4/66 to 12/29/66 shipper had 39 LTL shipments. Weight range 70 to 38,000 pounds.	Bowman, Superior, Trucking, ETMF, Roadway, Jetco, Transcon, Johnson.	Wants faster single-line service.	Bowman. Transcontinental and Roadway offer single-line service to some of the involved points. Harris and Ryder can render joint-line service to most of the involved points. Req. open top or flat bed equipment

114 M.C.C.

APPENDIX F

Population[1]

	1960 census	1970 census
Southwest		
Arkansas	1,786,272	1,886,210
Colorado	1,753,947	2,178,176
Louisiana	3,257,022	3,564,310
New Mexico	951,023	1,014,979
Oklahoma	2,328,284	2,498,378
Texas	9,579,677	10,989,128
Southeast		
Alabama	3,266,740	3,373,006
Florida	4,951,560	6,671,162
Georgia	3,943,116	4,492,038
Kentucky	3,038,156	3,160,555
Mississippi	2,178,141	2,158,872
North Carolina	4,556,155	4,961,832
South Carolina	2,382,594	2,522,881
Tennessee	3,567,089	3,838,777
Virginia	3,966,949	4,543,249
Middle Atlantic and New England States		
Connecticut	2,535,284	2,987,950
Delaware	446,292	542,979
Maryland	3,100,689	3,874,642
Massachusetts	5,148,578	5,630,224
New Hampshire	606,921	722,758
New Jersey	6,066,782	7,092,597
New York	16,782,304	18,018,615
Pennsylvania	11,319,366	11,669,565
Rhode Island	859,488	922,461
Midwest		
Kansas	2,178,611	2,222,173
Missouri	4,319,813	4,636,247

[1]Populations are taken from the 1961 and 1971 editions of *Rand McNally Road Atlas.*

APPENDIX G

Protestants

Of the 60 protestants remaining in this proceeding for which appearances were entered, evidence was presented on behalf of 48 of them through the testimony of 62 witnesses and numerous exhibits. This is summarized as follows:

HOLLOWAY MOTOR EXPRESS, INC. (HOLLOWAY) - GADSDEN, ALA.

Protest: - The Bowman application insofar as it seeks authority for the transportation of general commodities between Birmingham, Ala., on the east and Topeka, Kans., Kansas City, Kans., and Kansas City, Mo., on the west.

Operations: - Insofar as this application is concerned Holloway is authorized to transport over irregular routes:

Tires, tire fabrics, tire treads, and related items generally between Topeka, Kans., and points within 10 miles of Topeka, Kansas City, Kans., Kansas City, Mo., and points in Missouri within 10 miles of Kansas City, on the one hand, and, on the other, Birmingham, Decatur and Gadsden, Ala., Cedartown, Rockmart, Cartersville and Atlanta, Ga., and points within 10 miles of Atlanta, and Memphis, Tenn.; also

Paper and printed forms from Topeka to Birmingham and Gadsden, also

Grain, grain products, grain byproducts, animal and poultry feeds and ingredients thereof, generally from points in Kansas and Missouri (except St. Louis and its commercial zone and certain other areas) and from Alton, Ill., to points in Alabama north of a line extending along U. S. Highway 84 from the Mississippi-Alabama State line to junction U. S. Highway 331 near Opp, Ala., thence along U. S. Highway 331 to junction U. S. Highway 80 at Montgomery, thence along U. S. Highway 80 to the Alabama-Georgia State line, and to points in Georgia north of U. S. Highway 80; also from Alton, Ill., to points in Tennessee; and from Vernona, Mo., to Knoxville, Tenn.

Interest: - Insofar as this protest is concerned, Holloway maintains terminals at Gadsden and Topeka. Its principal shipper is Goodyear Tire and Rubber Company and its road equipment (27 over-the-road tractors and 53 van trailers) were purchased especially to meet the needs of that shipper. In 1966 Holloway's operating revenue was $965,784 of which 71 percent was derived from the Goodyear account.

The traffic managers of the Goodyear mills at Cedartown, Rockmart and Cartersville, Ga., on Friday of each week give Holloway a schedule of pickups for the following week. At Gadsden pickup orders generally are placed in the afternoon prior to the requested pickup, but at times on much shorter notice. Holloway holds out second day service in both eastbound and westbound operations on truckload shipments. About 60 percent of the shipments are truckload. Less-than-truckload shipments are accumlated until 12,000 to 18,000 pounds are available for transportation. Holloway's shippers are aware of this practice and have made no objection to it.

Eastbound Holloway transports grain, grain products, feed, etc. The shippers of these products call in their requirements to the Topeka office from which the trucks are dispatched. The major portion of the eastbound backhaul is of flour from Kansas points to wholesalers and bakeries in Georgia and Alabama. Availability of equipment for this eastbound freight is dependent upon the westbound Goodyear shipments. In 1966 Holloway transported 2,550 shipments westbound and 1,800 eastbound. Six of the eastbound shippers who account for approximately 22 truckload shipments per week, appeared on behalf of the Holloway protest to urge the necessity of having Holloway's service available to them for the satisfactory movement of their products. They are completely satisfied with the service Holloway affords and they know of no other single-line service available to meet their needs. A considerable amount of their freight is comprised of agricultural commodities for which no certificate is necessary.

The Goodyear witness who supported the Bowman application for service to Kansas City and Topeka found the Holloway service satisfactory, but was fearful of what might happen if there was a change in ownership of Holloway. He admitted that if the Bowman application were granted it is likely he would divert 50 percent of the freight from Holloway to Bowman. All of the westbound and a large portion of the eastbound

traffic of Holloway would be subject to diversion with the grant of the Bowman application.

CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE (CONSOLIDATED)[1] - AND AS OPERATOR OF SOUTHERN-PLAZA EXPRESS, INC. (SOUTHERN PLAZA) - MENLO PARK, CALIF.

Protest: - The Bowman application especially for service between the Southwest and eastern areas such as between Houston, Fort Worth, Dallas and Kansas City in the southwest area and Washington, Baltimore, Wilmington, Philadelphia, Newark, Paterson, South Plainfield and New York City in the eastern area and extending on into Connecticut and Massachusetts.

Operations: - The Consolidated system maintains terminals at all of the above points except Washington and also at other points in Pennsylvania, New York, Connecticut and Massachusetts which are affected by this application. It operates as a general commodity carrier from coast to coast. In 1966 its operating revenue was just under $178 million with an operating ratio of 91.3 percent.

Interest: - From its terminals in Texas, Oklahoma and at Fort Smith, Ark. (Southwest division), to its Atlantic division (which embraces its terminals in the New York City area, Philadelphia, Baltimore, Wilmington, Wilkes-Barre and York), Consolidated transported about 9.3 million pounds of freight during the first 4 months of 1967. Westbound from the Atlantic division to the Southwest division it transported 13.8 million pounds during the same period. Consolidated has established service standards for its operations. Between Houston, Dallas and Fort Worth, on the one hand, and, Baltimore, Wilmington, Philadelphia and the northern New Jersey points on the other, Consolidated holds out a five day service, and a six day service between those southwestern points and New York City or Washington, D. C. For the year 1966 however, its on time performance under these standards ranged from a low of 4.1 percent (Fort Smith to Newark) to a high of 58.9 percent (Philadelphia to Dallas).[2] This protestant is fearful that a grant of the Bowman application may result in a diversion of this Southwest-Atlantic division freight which is important to its system operations.

ILLINOIS-CALIFORNIA EXPRESS, INC. (ICX) - DENVER, COLO.

Protest: - The Red Ball and Strickland applications.

Operations: - ICX is a common carrier of general commodities operating over a network of routes which extend between Chicago, St. Louis and Dallas on the east and Los Angeles on the west, traversing and serving points in the States of Illinois, Iowa, Nebraska, Colorado, Texas, New Mexico, Arizona and California. Its authority between Dallas and Amarillo substantially duplicates that of Strickland and Red Ball; its authority also duplicates that of Red Ball in certain areas of New Mexico and

[1] In corrected certificate No. MC-42487 (Sub-No. 744), issued January 20, 1971, pursuant to *Consolidated Freightways Corp. of Delaware—Control*, 109 M.C.C. 76 (1969). Consolidated acquired regular-route authority generally between Louisville, Ky., and Cincinnati and Dayton, Ohio, on the north, Winston-Salem and Charlotte, N.C., and Greenville and Columbia, S.C., on the east, Atlanta, Dalton, Columbus, and Macon, Ga., on the south, and Chattanooga, Tenn., on the west.

[2] Exhibit 1521 shows that ontime performance from Fort Smith to South Plainfield, N.J., was 2.0 percent during 1966, and from Kansas City, Mo., to Washington, D.C., it was 73.3 during this period.

Colorado. It operates 242 road tractors, 1,003 road trailers, and 1,015 local units and service vehicles. It maintains 76 terminals and stations throughout its system.

Interest: - ICX offers overnight service on less-than-truckload freight between Dallas, on the one hand, and, on the other, its direct service points in Texas as far west as Amarillo and Lubbock, and second morning delivery on direct service points in New Mexico and Colorado. It interlines freight at Dallas with ETMF, Mercury Freight, Gordons, Herrin, Transcon, Red Ball, Braswell, Jones, Roadway and Strickland. Its interline volume at Dallas with ETMF and Mercury Freight is sufficient to warrant operating through trailer service. ICX also has arrangements with ETMF and Akers for through service with joint rates to the Eastern Seaboard and southeastern territories served by Akers.

ICX solicits the freight of five shippers located at Littleton, Denver, Colorado Springs and Pueblo, Colo., and Amarillo, Tex., who support the Red Ball application, and participates in the transportation of a portion of it. Revenue from the freight it handles between the points and gateways it serves in Texas, Colorado and New Mexico and points and gateways in the South or Southeast which applicants seek authority to serve is important to ICX for the continued operation and maintenance of its service facilities. A new competitive single-line service by Red Ball and Strickland as here proposed in competition with ICX and its connections through the Dallas, Amarillo, and Chicago gateways may cause some diversion of this valuable traffic.

SOUTHWESTERN TRANSPORTATION COMPANY (SW TRANSP.) - TEXARKANA, TEX.

Protest: - All applications.

Operations: - SW Transp., a railroad affiliated motor carrier, is authorized insofar as this proceeding is involved to transport general commodities over routes in the States of Texas, Arkansas, Tennessee and Missouri extending between Dallas, Fort Worth, Waco and Shreveport on the south to Memphis on the east and St. Louis on the north, serving intermediate points including such points as Little Rock, Magnolia, Camden, Fordyce, Pine Bluff, Jonesboro, and Blytheville, Ark., and Tyler, Corsicana, Greenville and Jacksonville, Tex. It operates 108 road tractors, about 635 trailers of various types, and over 210 pieces of city and service equipment.

Interest: - SW Transp. handles most of its traffic moving between southwestern and southeastern points through its Memphis terminal. In December 1966 traffic representing $5,985 revenue was received from Bowman at Memphis and traffic representing $3,177 revenue was given to Bowman. In the same period traffic representing $2,575 revenue was received from Roadway and traffic representing $6,413 revenue was given to that carrier. SW Transp. restricts the handling of shipments of furniture to points on its own line because of difficulties it has experienced in interlining such freight with connecting carriers. It opposes these applications because it is of the opinion that it is able to perform adequate service in conjunction with its connections on freight moving between the southeast and southwest areas.

ALAMO EXPRESS, INC. (ALAMO) - SAN ANTONIO, TEX.

Protest: - Portions of the Bowman, Floyd & Beasley, Deaton, Baggett and Johnson applications.

Operations: - Alamo is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction

with connecting long-haul carriers. Its operations extend generally between the Galveston-Texas City-Houston area on the east and Brownsville, Laredo and San Antonio on the west. It operates 118 road tractors, 238 semitrailers of various kinds and 184 pieces of city equipment.

Interest: - Houston is the major interchange point on the east, and points within 15 miles of Houston have been served by Alamo for years. In addition, Texas City is a very important traffic producing point for Alamo. For example, in April 1967, Alamo originated 77 shipments weighing over 1.4 million pounds which produced a revenue for Alamo of $4,844. In addition Alamo delivers or originates much freight within 15 miles of Houston which it interlines at Houston with connecting carriers. Alamo is of the opinion that it is giving the public a reliable and expeditious service. It has large investments in equipment, terminals and other facilities which are not being operated to capacity and diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area.

CENTRAL FREIGHT LINES, INC. (CENTRAL) - WACO, TEX.

Protest: - The Deaton application and portions of the applications of Bowman, Johnson, Floyd & Beasley and Baggett.

Operations: - Central is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction with connecting long-haul carriers. Its routes extend generally between the Beaumont, Orange and Port Arthur area on the east, through the Houston-Galveston area to Brownsville on the south, and through central Texas to Wichita Falls and Denison on the north. It operates 418 tractors, 1,010 trailers of various types, 481 trucks, and 41 pieces of service equipment.

Interest: - Central interlines a considerable amount of traffic at such points as Houston and Dallas, much of which is moving to or from points on the routes of the carriers it protests. Competition from new single-line services as proposed by these applicants, particularly in connection with points within the 15 mile radius of Houston and Dallas and such points as Port Arthur, Beaumont, Orange, Texas City, Smiths Bluff, Greenville and Garland, may divert some of this freight from Central Freight. The carrier has a large investment in facilities and equipment which are not being used to capacity. It is the position of Central Freight that with its connections it can offer a more reliable and expeditious service responsive to the needs of the public than can the applicants, and that diversion of this important traffic will result in impairing the quality of its service.

RED ARROW FREIGHT LINES, INC. (RED ARROW) - SAN ANTONIO, TEX.

Protest: - The Deaton application and portions of the applications of Bowman, Floyd & Beasley and Baggett.

Operations: - Red Arrow is a common carrier of general commodities operating over routes wholly within the State of Texas extending between the Dallas and Fort Worth area and Houston, including points within 15 miles of each of these cities, and also between Houston and points within 15 miles, on the one hand, and, on the other, Orange, Beaumont, Texas City, Port Arthur and Smiths Bluff. It operates 118 tractors and 297 trailers in over-the-road service, and 114 trucks, 36 tractors, and 40 trailers in city equipment.

Interest: - Red Arrow interlines freight particularly through the Dallas-Fort Worth and Houston gateways including freight moving to and from points in the East and

Southeast served by the applicants it ir protesting. Its position is substantially the same as that of Central Freight and Alamo.

EAGLE MOTOR LINES, INC. (EAGLE) - BIRMINGHAM, ALA.

Protest: - The Bowman and Floyd & Beasley applications.

Operations: - Eagle is an irregular route common carrier primarily of specific commodities operating over a large area of the United States. Over 95 percent of its shipments are in truckload quantities and 95 percent of the freight handled can be classified generally as iron and steel articles, pipe, or machinery. It operates about 336 tractors and 534 trailers including vans, flats, telescopic, converters, pole, lowboys, drop frames, I-beams, and refrigerated trailers. Approximately 80 percent of the tractors and 20 percent of the trailers are leased from owner-operators.

Eagle's authority which is in conflict with the protested applications embraces the transportation of general commodities from points in Georgia, Mississippi, and Tennessee to Birmingham and points within 10 miles thereof; iron and steel articles from Birmingham and points within 10 miles thereof to points in Georgia, Mississippi, Tennessee, Texas, Virginia and portions of Louisiana and Florida; contractors' equipment between Bessemer and points in Alabama within 100 miles thereof, on the one hand, and, on the other, points in Georgia, Mississippi, Tennessee and portions of Louisiana and Florida; cotton gin machinery and parts and veneer mill lathes from Birmingham to points in Texas; fiber pipe and iron and steel articles from various points in Alabama including Birmingham to points in Arkansas and Oklahoma; trailers from Birmingham and Haleyville, Ala., and Collins, Miss., to points in the United States and of the same commodities from the destination area to Birmingham.

Interest: - It is Eagle's position that even though the applicants it is protesting may limit their extension applications to certain specific points in Texas, Kansas, Missouri, Mississippi or Arkansas, they become new competitors to many other points by virtue of improving their interline capabilities through the new gateways. Accordingly, Eagle noted some 14 million pounds of freight (mostly iron and steel articles) handled by it during May 1967 producing a revenue of $94,000 which it considered to be subject to possible diversion should the applications of Bowman and Floyd & Beasley be granted.

T.I.M.E. FREIGHT, INC. (T.I.M.E.)[1] - LUBBOCK, TEX.

Protest: - All applications.

Operations: - T.I.M.E. is a common carrier carrier of general commodities operating over routes which extend between San Francisco and Los Angeles on the west, El Paso, Oklahoma City and Atlanta on the south, Kansas City, Chicago and Cincinnati on the north, and New York and Boston on the east. T.I.M.E.'s basic operations are (1) between Middle Atlantic and New England territory, on the one hand, and, on the other, the South, Midwest and West; (2) between the Midwest, on the one hand, and, on the other, the South and Southeast; and (3) between the South and Southeast, on the one hand, and, on the other, the Southwest and West.

[1]Pursuant to supplemental order of the Commission, division 3, in No. MC-F-9822, entered May 26, 1969, T.I.M.E. acquired authority in certificate No. MC-35320 (Sub-No. 109), issued May 8, 1970, to transport general commodities, with the usual exceptions, over regular routes between Tulsa, Muskogee, and Oklahoma City, Okla., on the one hand, and, on the other, San Antonio and Dallas, Tex., As indicated in appendix C, the name of this carrier has been changed.

It maintains 29 terminals at various key locations throughout its routes. It operates 513 road tractors, 1,304 road trailers, 412 city tractors, 376 city trailers, 206 straight trucks and 63 service vehicles. The only protective service offered is by portable heaters. In 1966 its operating revenue was over $57 million and its operating ratio 92.15 percent. Its average length of haul for all of its freight in March 1967 was 1,112 miles.

T.I.M.E. holds out to the public an overnight service on truckload and second day on less-than-truckload freight between Atlanta, on the one hand, and, on the other, Memphis, Little Rock, Springfield and Tulsa. From the eastern terminals such as Boston, New York, Philadelphia, Baltimore, York, Pa., to Memphis the holding out is second day on truckload and third day on less-than-truckload freight and that same service is also held out on the Atlanta to Oklahoma City freight. No evidence was presented as to actual performance under those schedules. Although authority to serve other points in Arkansas, Oklahoma and Missouri is held, T.I.M.E. serves only Little Rock and West Memphis in Arkansas, Oklahoma City and Tulsa in Oklahoma, and Springfield, St. Louis and Kansas City and Missouri, except for an occasional volume shipment. Freight destined to other points in those States which it is authorized to serve is interlined to other carriers for delivery.

Interest: - During the month of March 1967 it handled freight between its Atlanta terminal and other terminals here involved as follows:

Terminals	Number shipments	Pounds	Revenue
Atlanta to Memphis	2,185	1,537,247	$25,493.00
Memphis to Atlanta	1,576	1,397,890	19,623.29
	3,761	2,935,137	45,116.29
Atlanta to St. Louis	2,091	1,271,826	25,039.55
St. Louis to Atlanta	2,367	2,769,761	47,024.39
	4,458	4,041,087	72,063.94
Atlanta to Chicago	775	307,052	9,963.92
Chicago to Atlanta	1,185	1,054,277	23,794.45
	1,960	1,561,329	33,758.37
Atlanta to Springfield	503	253,574	6,566.74
Springfield to Atlanta	271	209,488	5,767.97
	774	463,062	12,334.71
Atlanta to Kansas City	1,560	744,460	21,929.70
Kansas City to Atlanta	1,027	845,637	21,629.28
	2,587	1,590,097	43,558.98
Atlanta to Tulsa	1,033	529,695	13,843.11
Tulsa to Atlanta	377	203,175	5,111.90
	1,410	732,870	18,955.01
Atlanta to Oklahoma City	2,374	1,131,055	32,862.56
Oklahoma City to Atlanta	588	713,702	17,843.84
	2,962	1,844,757	50,706.40
Atlanta to Little Rock	1,259	695,563	13,153.92
Atlanta to terminals west of Oklahoma City	5,306	4,109,805	224,836.04
Terminals west of Oklahoma City to Atlanta	6,475	3,821,068	229,803.27

During the month of March 1967, at Memphis T.I.M.E. interlined to Red Ball 4,097 shipments weighing over 3 million pounds producing revenue for Red Ball of $44,156. This freight moved primarily to points in Texas and Louisiana from points in the northern, eastern and southern areas. It gave Herrin 1,070 shipments of similar traffic weighing 540,385 pounds and producing revenue for Herrin of $10,103. Traffic interlined to Southwestern Transp., ETMF and Gordons moved mostly from midwestern and eastern points to Texas points. T.I.M.E. gave SW Transp. 1,311 shipments weighing 809,935 pounds and $15,121 revenue. Its interline to ETMF during this period was 579 shipments weighing 449,034 pounds and producing revenue of $8,861; to Gordons 807 shipments weighing 419,223 pounds and producing revenue of $5,852. Its interline to Jones goes to Missouri and Arkansas points primarily and amounted to 1,583 shipments weighing 987,617 pounds and producing revenue to Jones of $15,856. Some of this latter traffic came from western origins. Protestant is of the opinion that a substantial portion of this freight now interlined at Memphis would be subject to diversion if the applications were granted.

WATSON-WILSON TRANSPORTATION SYSTEM, INC.[1] (WATSON-WILSON) -

Protest: - Bowman application.

Operations: - Watson-Wilson is a motor common carrier of general commodities over regular and irregular routes in the States of California, Arizona, New Mexico, Colorado, Nebraska, Kansas, Iowa, Minnesota, Illinois, Tennessee, Georgia and South Carolina. It maintains 30 terminals throughout its system and operates in line-haul service 368 tractors and 631 trailers including vans, open tops and refrigerated units. Its operating revenue for 1966 was over $35 million. That of Yellow Transit was nearly $56 million.

Interest: - Watson-Wilson's interest concerns primarily service between Kansas City and Topeka, on the one hand, and, on the other, points in Tennessee, Georgia and South Carolina. Between its Kansas City terminal, on the one hand, and, on the other, its terminals in Chattanooga, Tenn., Rome, Atlanta and Augusta, Ga., and Greenville and Charleston, S. C., during the first four months of 1967 it transported 10,130 shipments weighing 13,561,657 pounds and producing revenue of $335,466. By far the largest portion of this freight moved between Atlanta and Kansas City with substantial tonnage also moving between Kansas City and the Chattanooga and Greenville terminals. During the same four month period Watson-Wilson found that it had transported freight for seven of the shippers who testified in support of the Bowman application from Kansas City to points in Tennessee, Georgia and South Carolina for delivery to consignees or interlined to other carriers. These totaled 230 shipments weighing 383,713 pounds and produced revenue of $12,729.

In a one week test period in March 1967, Watson-Wilson transported 269 shipments from its Atlanta terminal to Kansas City for delivery to consignees or connecting carriers. These shipments weighed 312,313 pounds and produced revenue of $8,875. Seventy-eight percent of the shipments were delivered within 3 days of the billing date at Atlanta and 96 percent within four days. During the same test period 84 shipments

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[1] At the time of the hearing, Watson-Wilson was controlled by Yellow Transit Freight Lines, Inc. Subsequently, the Commission approved merger of Watson-Wilson into Yellow Transit Freight Lines, Inc., 104 M.C.C. 737, which transaction was consummated December 9, 1968. The name of the surviving corporation has been changed to Yellow Freight System, Inc.

were transported from the Chattanooga terminal to Kansas City weighing 78,720 pounds and producing revenue of $2,123. Seventy-one percent of these shipments were delivered within three days from the Atlanta billing date and 93 percent within four days. From the Greenville terminal there were 42 shipments to Kansas City during the period weighing 29,792 pounds and producing revenue of $967. Forty-eight percent were delivered within three days and 86 percent within four days. During that period 17 shipments were handled from the Augusta terminal to Kansas City, 15 from the Rome terminal and 5 from the Charleston terminal. These 37 shipments weighed an aggregate of 75,491 pounds and produced revenue of $2,242. Thirty-eight percent were delivered within three days of the billing date and 89 percent within four days.

Bowman is one of Watson-Wilson's primary interline carriers in the southeastern area. The protestant is of the opinion that the granting of the Bowman application will jeopardize the traffic it now has between Kansas City and Topeka, on the one hand, and Atlanta and points in the southeastern area on the other.

TRANS-COLD EXPRESS, INC. (TRANS-COLD) - IRVING, TEX.

Protest: - All applications.

Operations: - Trans-Cold is a common carrier of specific commodities, primarily various kinds of food products, operating between numerous points and areas within the United States. Its general office is at Irving (Dallas), Tex., and it also maintains offices at Brownsville, Tex., Norwalk, Calif., Chicago, Ill., Wichita, Kans., Somerville, Mass., and Jersey City, N. J. It operates 21 pieces of city and service equipment, 153 road tractors and 176 road trailers. All trailers are mechanically refrigerated. It maintains refrigerated storage facilities at Irving and at Jersey City. The preponderance of the company's operation is between the Southwest and East, and from the Southwest to the Southwest. Its primary customers are large chain stores, warehouses, various of the larger foodstuffs manufacturers, and meatpackers.

Interest: - Trans-Cold transports substantial quantities of freight requiring protective service from the East to the Southwest, from the Southwest to the East, and from the Southwest to the Southeast (but not in the reverse direction) which it believes may be subject to diversion should these applications be granted. To a much lesser extent there is a possibility of some diversion of its freight moving between the East and West. During the month of May 1967, Trans-Cold transported 254 shipments weighing over 4 million pounds from points in New York, New Jersey, Ohio, Connecticut, Massachusetts and Pennsylvania primarily to points in Texas with some shipments going to points in Oklahoma, Arkansas, and Missouri. In the same period Trans-Cold transported 94 shipments weighing about 2.5 million pounds from the Southwest (all from Texas except one shipment from Oklahoma and one from Arkansas) to points in New York, New Jersey, Maryland, Massachusetts, Connecticut, Pennsylvania and Virginia. During the same period 70 shipments weighing about 2.3 million pounds were transported from points in Texas and New Mexico to points in Alabama, Florida, Georgia, and the Carolinas. From eastern origins to western destinations (Arizona, Utah, Oregon and Washington) in this period Trans-Cold transported 114 shipments weighing 1.4 million pounds.

The great majority of the freight handled by Trans-Cold is in truckload quantities. At Irving, however, it does accumulate shipments of less-than-truckload quantities from Texas origins, and approximately 3 times a week dispatches loads containing such less-than-truckload shipments for southeast and eastern destinations.

Trans-Cold opposes the granting of any authority that may result in a diversion of any of the above freight from its operations.

MISSOURI PACIFIC RAILROAD COMPANY (MOPAC) - THE TEXAS & PACIFIC RAILWAY COMPANY (T&P) - MISSOURI PACIFIC TRUCK LINES, INC. (MPTL) - THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY (T&PMT) -

Protest: All applications except Roadway and Herrin.

Operations: - MoPac controls T&P and they are being jointly operated pursuant to authority of this Commission. Their respective motor carrier affiliates are wholly owned subsidiaries of the parent rail companies. These motor carriers operate over regular routes in the States of Texas, Arkansas, Louisiana, Mississippi, Tennessee, Missouri, Kansas and Nebraska, paralleling the railroad operations to a considerable extent. They operate regular schedules over the system which embraces approximately 17,000 miles of routes, serving approximately 1,700 cities, towns and villages. They maintain major terminals at 30 cities in Texas, 15 in Arkansas, 12 in Louisiana and 11 in Kansas, and together operate about 456 tractors, 542 trailers, and 220 city units.

Interest: - MPTL and T&PMT conduct substantial operations over their routes serving the points authorized, and the traffic generated at the points served locally is vitally important to continuation of their operations. They interline freight with other carriers including some of the applicants. During May 1967, they received 90,508 pounds of freight from Bowman at Memphis producing revenue of $2,122. In the same month they interlined to Bowman 156,251 pounds of freight for a revenue of $1,613. They also interlined to Deaton at Memphis 176 pounds of freight with a revenue of $2.43 during the month. During this same period at New Orleans they interlined freight with Deaton, Baggett, Johnson and Strickland aggregating 475,202 pounds and producing revenue of $4,912.

These four protestants are of the opinion that the granting of these applications will not result in the development of any new traffic, but will serve only to dilute traffic and revenue of existing carriers operating in this particular area, and make it more difficult for them to give an adequate and dependable service to the public. These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them.

RED LINE TRANSFER & STORAGE COMPANY, INC. (RED LINE) - PINE BLUFF, ARK.

Protest: - The Red Ball, Strickland, Bowman and Jones applications.

Operations: - Red Line is a motor common carrier of general commodities operating daily schedules over regular routes out of Memphis, Tenn., Little Rock, Ark., and Greenville, Miss., into all of southeastern Arkansas, and to Monroe and Bastrop, La., with return schedules the same day, but restricted against service between Memphis and Little Rock or between Memphis and Greenville. It maintains 10 terminals on its routes and two call stations. Red Line operates 33 tractors, 60 trailers and 38 pickup trucks. Its operating revenue in 1965 was $1.5 million and its operating ratio was 99.1 percent. It interlines freight at Little Rock, Memphis, Pine Bluff, Crossett, Monroe, and Greenville, including interline with the applicants here protested at one or more of the points.

Interest: - During the months of October, November and December, 1966, Red Line received in interline service at Memphis for delivery at points on its routes about 1,000 shipments which originated at or moved through Atlanta or Birmingham and which

produced revenue for Red Line of approximately $8,000. Of these shipments 53 were received from Bowman aggregating 34,868 pounds.

During a three day period (June 6, 7 and 8, 1967) Red Line interlined with Strickland at Little Rock 42 shipments weighing 118,377 pounds and producing revenue for Red Line of $726 and for Strickland of $1,550. Red Line has interlined such freight with Strickland at Little Rock for the past 10 years.

During a one week period May 1 through May 8, 1967, Red Line originated 44 shipments at Memphis which it transported to Lake Village, Ark., producing total revenue of $429. No interline freight is included. This is a daily operation, the truck being routed through Pine Bluff to pick up intrastate shipments from that area going to Lake Village inasmuch as there is insufficient freight for a direct schedule from Memphis. In the same period 39 interstate shipments were originated by Red Line at Lake Village producing a revenue of $164. It also orginated 27 shipments at Greenville, Miss., producing a revenue of $205. During the same week Red Line originated 84 interstate shipments as Crossett, Ark., which were interlined to connecting carriers or delivered by Red Line at Memphis, Little Rock or Monroe and which produced revenues for Red Line of $2,597.

Red Line is of the opinion that a diversion of any of this freight would jeopardize its ability to continue a daily service between its terminal points and serving the intermediate and off-route points. Red Line's present competition for the Lake Village traffic are ABF, Campbell Sixty-Six, Atlas Transit, and MoPac.

GORDONS TRANSPORTS, INC. (GORDONS) - MEMPHIS, TENN.

Protest: - All applications.

Operations: - Gordons is primarily a regular route general commodity carrier with authorized routes extending between Chicago and St. Louis on the north, New Orleans, Gulfport and Mobile on the south, Atlanta, Ga., on the east, and Dallas, Fort Worth, Fort Smith and Kansas City on the west. It is authorized to conduct single-line operations between Atlanta, Ga., and Birmingham, Huntsville and Decatur, Ala., on the one hand, and, on the other, Memphis, Kansas City, St. Louis, Chicago, Dallas, Fort Worth, Little Rock, Fort Smith and the Mississippi points of Greenville, Greenwoood, Cleveland and Indianola; also between Chicago and St. Louis, on the one hand, and, on the other, Jackson and Gulfport, Miss., and Baton Rouge, New Orleans and other Louisiana points. It maintains 17 company terminals and 5 agency terminals throughout its system. It operates 309 tractors, 815 trailers of various types, and 812 city equipment units. In 1966 its operating revenue was about $31.4 million with an operating ratio of 91.8 percent.

Gordons is predominantly a less-than-truckload carrier. In 1966, it transported 1,674,816 less-than-truckload shipments and 26,758 truckload shipments. Of the less-than-truckload shipments handled, 40.1 percent were minimum rated and 71.8 percent weighed less than 500 pounds. The less-than-truckload shipments accounted for 72.6 percent of its operating revenue. 68.8 percent of the total shipments were transported in joint-line service producing 55.2 percent of the revenue. Gordons interlines freight with short-line operators at its major terminals which freight originates at or is terminated at numerous points Gordons is authorized to serve. This is especially true where the volume of freight fails to warrant daily schedules, and accumulation of an adequate volume would result in delay in handling the freight.

In like manner, Gordons may operate a certain number of schedules between terminals daily, but if there is insufficient freight to warrant dispatching one of the

schedules the freight may be held a day for additional freight to round out the trailer load. In this connection Gordons considers traffic volume as the key to establishing service standards. Where there is sufficient freight to load a through trailer to destination the freight moves faster than if loaded to a break-bulk point. In some instances it is advantageous both from the standpoint of economy and service to use every-other-day through schedules rather than daily schedules over a break-bulk point.

Gordons has established certain service standards which it holds out to the public. It has found that there are very few complaints regarding service if freight is delivered not more than one day beyond the service standard. These standards as pertinent to operations here considered include second day service from Atlanta to Dallas, and from Chicago and St. Louis to Atlanta and Birminghma; third day service from Kansas City to Atlanta and Birmingham, from Birmingham to Dallas, and from Chicago to Baton Rouge, New Orleans, other Louisiana points, Gulfport and Mobile. An examination of Gordons' records for a one week test period in May 1966, covering 5,694 shipments handled between the above points[5] disclosed "on time" performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard.

The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. An analysis of its traffic for the year 1966 discloses that at its Atlanta terminal 89.6 percent of the outbound and 95.1 percent of the inbound freight is involved in these proceedings, and is subject to diversion if these applications are granted; at Baton Rouge 83.5 percent of the outbound and 81.2 percent of the inbound freight is involved; at Birmingham 98 percent of the outbound and 98.5 percent of the inbound freight in involved; at Dallas it is 24.8 percent of the outbound and 43.7 percent of the inbound freight; at Gulfport 89.7 percent of the outbound and 90.6 percent of the inbound freight; at Jackson 59 percent of the outbound and 54.4 per cent of the inbound freight is involved; at Kansas City 42.1 percent of the outbound and 44.3 percent of the inbound freight is involved; at Mobile 86 percent of the outbound and 91.2 percent of the inbound is involved; at New Orleans 69.5 percent of the outbound and 87.7 percent of the inbound freight is involved.

Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. Gordons serves many of the shippers who testified in these proceedings on behalf of certain of the applicants. Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles a total of 1,045,560 miles, much of it between points involved in these applications.

SUPPORTING GORDONS' PROTEST

Five motor carriers who were not themselves protestants in these proceedings testified in support of Gordons' protest. Ellis Trucking Company, Inc., of Indianapolis, Ind., operates as a common carrier of general commodities over regular routes extend-

[5]Excludes bills with no delivery date, and those involving unusual circumstances such as "will call" shipments, C.O.D.'s or order notify shipments, and redeliveries.

ing between Memphis, on the one hand, and, on the other, numerous points in Kentucky, Indiana, Ohio and Michigan, with terminals at Memphis, Tenn., Cincinnati and Dyaton, Ohio, Indianapolis, Anderson, Marion, and Fort Wayne, Ind., Detroit, Pontiac, Flint, Saginaw, Lansing and Jackson, Mich. Its operating revenue for 1966 was over $12 million. Roadway serves all the above points. At Memphis Ellis interlines primarily with Gordons, Braswell and Herrin. In May 1967 Ellis from the above terminals interlined at Memphis 1,573 shipments weighing over 2 million pounds destined to New Orleans, Baton Rouge, Mobile, Gulfport and Biloxi. All of this freight would be subject to diversion to the proposed Roadway single-line service.

Southern Forwarding Company of Memphis is a motor common carrier of general commodities operating over regular routes in Tennessee and Kentucky primarily between Louisville and Memphis via Nashville. Its operating revenue for 1966 was over $1.7 million. In January 1967 Southern Forwarding handled 40 shipments weighing 121,860 pounds from Louisville destined to New Orleans and 60 shipments weighing 46,494 pounds from Louisville destined to Baton Rouge which were interlined at Memphis. This traffic would be subject to diversion to Roadway. Also subject to diversion to Bowman would be freight from Nashville to New Orleans and Baton Rouge.

Mid-South Transports, Inc., of Memphis, is a motor common carrier of general commodities in the State of Tennessee operating generally between Memphis and Nashville and between Memphis and Clarksville serving various intermediate points. Its operating revenue for 1966 was approximately $2.5 million. In the first three months of 1967 Mid-South originated 121 shipments weighing 296,141 pounds at Clarksville, Tenn., destined to points proposed to be served by Roadway and during the same period 94 shipments weighing 40,610 pounds at Nashville destined to the same Gulf Coast area. This freight was interlined to connecting carriers at Memphis. The two shippers of this freight testified in support of the Roadway application and the freight would be subject to diversion by that carrier. Similarly, during the period from October 10 to October 22, 1966, Mid-South participated in the movement of 121 shipments weighing 117,295 pounds between points in Tennessee and Kentucky including Nashville and Clarksville, on the one hand, and, on the other, points in Louisiana and Mississippi which also would be subject to diversion.

Wilkerson Freight Lines, Inc., of Moss Point, Miss., is a common carrier of general commodities operating over a regular route between Pascagoula, Miss., and Mobile, Ala., serving all intermediate points and the off-route point of Escatawpa. It operates 9 tractors and 16 trailers. Less-than-truckload traffic is handled on its own equipment. Truckload freight for the International Paper Company plant at Moss Point, Miss., is handled in conjunction with Bowman, Gordons, Cole and Mercury Freight using the connecting line's trailer with the interline being made at Mobile. Forty-five to 60 percent of its traffic is handled for International Paper Company. That company testified on behalf of the Johnson and Bowman applications.

Atlas Transit, Inc., of Little Rock, Ark., is a motor common carrier of general commodities operating over a network of regular routes in Arkansas between West Memphis, Little Rock, El Dorado, Texarkana, Arkadelphia, Pine Bluff, Hot Springs, Conway, Fort Smith, Fayetteville and Springdale. It maintains 15 terminals throughout its routes and operates 19 road tractors, 77 road trailers and 28 city pickup vans. On freight moving to or from Memphis Atlas purportedly interlines with Powell Truck Lines on a through unit and one carrier (for rate purposes) basis. Jones, Herrin, Strickland and Red Ball all operate in Arkansas and Bowman proposes operation in Arkansas. Atlas handles a substantial amount of interstate freight through interline

especially at West Memphis and Little Rock. This freight is essential to the continued operation of various terminals which provide a necessary service to many small cities and communities in Arkansas. A shift in the interline point from Memphis to Little Rock would either divert freight entirely from Atlas or substantially reduce its portion of the operating revenue.

MERCURY MOTORS INCORPORATED (MERCURY MOTORS) - FORT SMITH, ARK.

Protest: - The Bowman application; (also appeared as a witness for Gordons in support of their protest of the Jones, Red Ball and Strickland applications).

Operations: - Mercury Motors is a common carrier of general commodities operating over regular routes between Memphis and Fort Smith by way of Little Rock, and beween Memphis and Snow Lake, serving intermediate points and certain off-route points; also over irregular routes between Memphis on the one hand, and points in the west central portion of Arkansas on the other. Its 1966 operating revenue was over $2.7 million. It maintains terminals at Memphis, Fort Smith, Little Rock and Helena.

Interest: - During 1966 Mercury Motors received from Bowman in interline service at Memphis 1,408 shipments weighing 1,258,021 pounds and producing revenue for Mercury Motors of $14,228. During the same period it interlined to Bowman at Memphis 231 shipments weighing 1,079,150 pounds and producing revenue for Mercury Motors of $8,764. This freight is subject to diversion to Bowman should the Bowman application be granted.

AKERS MOTOR LINES, INC. (AKERS) - GASTONIA, N. C.

Protest: - All applications.

Operations: - Akers is a common carrier of general commodities operating over an extensive network of routes between points in Georgia, South Carolina, North Carolina and on up the East Coast through Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. It maintains terminal facilities at 85 cities and operates 183 trucks, 552 tractors, and 1,102 trailers of various types.

Interest: - Interline traffic is a vital part of the Akers operation and any diversion of such freight from its lines by virtue of these applications will be detrimental to the carrier and impair the quality of service it is able to give to the public. Akers restricts the application of through rates to not more than a 2-line haul on truckloads and a 3-line haul on less-than-truckload freight, and in the latter instance only when Akers is the intermediate carrier.

MERCURY FREIGHT LINES, INC. (MERCURY FREIGHT) - MOBILE, ALA.

Protest: - All applications.

Operations: - Mercury Freight is a common carrier of general commodities operating between Birmingham on the north, Mobile and Pensacola on the south, Beaumont, Houston, Dallas and Fort Worth on the west. By certificate dated May 24, 1968, in No. MC-113528 (Sub-No. 12), Mercury Freight is authorized to serve as intermediate and off-route points Baton Rouge, and points within 15 miles thereof, Lake Charles and points within 15 miles thereof, Bay Minette and Jackson, Ala., and Picayune, Miss., and the NASA test site near there. It maintains terminals at Birmingham, Selma, Mobile, Pensacola, Dallas, Fort Worth, Beaumont and Houston. It operates 82 tractors, 168 trailers and 48 pickup trucks. Its 1966 operating revenue was over $4.8 million. In that year it handled 267,109 less-than-truckload shipments and 8,152

truckloads. In 1966, 20 percent of Mercury Freight's total tonnage was local to its line, 66 percent was interline freight either originating or terminating on its lines, and 14 percent was interline freight where Mercury Freight was a bridge carrier. Thus, 80 percent of its freight is interline, including such service with some of the applicants.

Mercury Freight holds out to the public next day delivery between Birmingham and Mobile and between Birmingham and Pensacola; second day service between Birmingham and Houston, Birmingham and Dallas, Mobile and Houston and Mobile and Dallas. Its on time performance under those schedules as determined by records of 7,885 shipments covering a number of one week periods during 1966 ranges from a low of 76.4 percent to a high of 93.8 percent. It also holds out a second day joint-line service between Atlanta and Houston or Dallas.* Mercury Freight is not operating to capacity and is in need of additional freight. In the period from July to December 1966, Mercury Freight dispatched 86 empty trailers from its Pensacola terminal for lack of outbound freight. Similarly, it dispatched 127 empty trailers from Houston for lack of traffic in that six month period. In 1966, 99.2 percent of the individual shipments handled by Mercury Freight were free from any claim for loss or damage and from a revenue standpoint the claim ratio of the company was 1 percent.

Interest: - Aside from added competition with its extensive joint-line services which these applicants propose, Mercury Freight's single-line service will be duplicated by one or more of these applications. For example, six of the applicants proposed to duplicate Mercury Freight's single-line service between Birmingham and Dallas, Birmingham and Houston, Birmingham and Beaumont, and Birmingham and Fort Worth. Between Mobile and Dallas, Mobile and Houston, Mobile and Beaumont and Mobile and Fort Worth, four of the applicants propose single-line service duplicating that of Mercury Freight. Between Pensacola and Dallas, Pensacola and Houston, Pensacola and Beaumont, Pensacola and Fort Worth, two applicants proposed single-line service duplicating that of Mercury Freight. And between Selma, on the one hand, and, on the other, Dallas, Houston, Fort Worth and Beaumont, one of the applicants is proposing a new single-line service duplicating that of Mercury Freight.

As previously mentioned Mercury Freight interlines substantial traffic with several of the applicants. In 1966 Mercury Freight interlined to Roadway at Birmingham 1,494 shipments weighing over 2.4 million pounds moving to points in the Roadway system, and received from Roadway 7,588 shipments weighing over 4.9 million pounds. It interlined to Bowman at Birmingham 3,692 shipments weighing over 7.3 million pounds and received from Bowman 2,293 shipments weighing 7.2 million pounds. It interlined to Johnson at Mobile 194 shipments weighing 414,498 pounds and received from Johnson 2,119 shipments weighing 1.6 million pounds. Mercury Freight gave Baggett at Birmingham 4,006 shipments weighing over 4 million pounds and received from Baggett 1,464 shipments weighing over 2 million pounds. It gave Floyd & Beasley 141 shipments weighing 76,904 pounds and received from Floyd & Beasley 2,985 shipments weighing over 1.7 million pounds. It interlined to Deaton for the year 935 shipments weighing over 1 million pounds and received from Deaton 866 shipments weighing 514,165 pounds. It gave Red Ball at Mobile 326 shipments weighing 411,909 pounds and received from Red Ball 43 shipments weighing 79,613 pounds. This freight totaling for the year 1966, 17,358 shipments weighing over 18 million pounds is subject to diversion. Mercury Freight has handled the freight of at

*In No. MC-F-9918, *Mercury Freight Lines, Inc.—Purchase (Portion)—Sam N. Cole* (not printed), decided April 11, 1969, Mercury Freight was authorized to acquire by purchase operating rights extending its authority between Birmingham and Atlanta.

least 57 of the witnesses testifying in this proceeding. The witness for Mercury Freight also noted that for 100 of the witnesses testifying on behalf of certain of the applicants who ship or receive freight at points within Mercury Freight territory, a check of its records for periods ranging from six months to a year during 1966 failed to disclose that any of them tendered a shipment to Mercury Freight.

HOWARD HALL COMPANY, INC. (HOWARD HALL) - BIRMINGHAM, ALA.

Protest: - The Bowman application.

Operations: - Howard Hall is a motor common carrier of general commodities operating over irregular routes between Birmingham and points within 65 miles thereof and Montgomery, Ala., on the one hand, and, on the other, points in Georgia south of U. S. Highway 80 and those in Florida north of a line extending from Clearwater through Tampa to the East Coast. It maintains terminals at Birmingham, Jacksonville, Orlando, Pensacola and Tampa from which the surrounding areas are served by peddle runs. Pickup and delivery service is performed for Howard Hall by cartage agents at Daytona Beach, Gainesville, Lake City, Melbourne, Ocala, Panama City, and Tallahassee, Fla., and Anniston, Gadsden, Montgomery, and Tuscaloosa, Al. The company operates 187 trailers of various types, 41 tractors and 27 trucks used in pickup and delivery work, and 64 road tractors. In 1966 it transported 170,288 less-than-truckload shipments and 10,172 truckload shipments and its operating revenue was over $3.7 million.

Interest: - In a 12-month period (July 1, 1966-June 30, 1967) Howard Hall's operation between Birmingham and Pensacola produced some $405,000 operating revenue or approximately 10 percent of its total operating revenue. It considers this freight to be subject to diversion by the proposed new Bowman service which will eliminate the circuity involved in its present authority to perform such service. In addition, Bowman is proposing a new service to many points now served by carriers with which Howard Hall interlines freight at Birmingham. This freight also would be subject to diversion to the proposed new single-line Bowman service.[1]

WEST BROTHERS, INC. (WEST) - HATTIESBURG, MISS.

Protest: - The Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman and Johnson applications.

Operations: - West is a motor common carrier of general commodities operating primarily over regular routes extending between Birmingham, Montgomery, and Mobile, Ala., on the east, New Orleans on the south, and Memphis on the north, the latter point being subject to certain restrictions. Its routes are concentrated in the southern half of Mississippi, and include among its 167 service points in Mississippi, Alabama, and Louisiana such major cities as Jackson, Hattiesburg, Laurel, McComb, Brookhaven, Biloxi, Gulfport, and Pascagoula, Miss., Birmingham, Montgomery, and Mobile, Ala., and New Orleans and surrounding points in Louisiana.[2] It operates 14 terminals within this area. In 1966 its operating revenue was over $6 million. In its

[1] Through its purchase of a portion of the operating rights of Alabama Highway Express, Inc., No. MC-F-9921, consummated August 15, 1968, Bowman now holds operating authority substantially duplicating that of Howard Hall, thus eliminating the basis of this protest.

[2] Subsequent to this hearing, West has received authority to extend its operations to Natchez, Miss., and Baton Rouge, La., subject to certain restrictions. Also subsequent to this hearing, applicant Roadway has acquired control of West. As indicated in appendix C, the name of this carrier has been changed.

business West operates 100 road tractors, 298 trailers, and 123 pieces of city equipment.

Interest: - Of the 167 towns that are served directly by West only 58 will not be affected by these applications and those are primarily very small communities, the total population of which aggregates only 59,516. Interline freight is an important segment of West's operations and a considerable amount of interline traffic is handled with these applicants. For example, in a two week period in October 1966, West received over 1.9 million pounds of freight from the 7 applicants it is protesting which it considers subject to diversion. During the first six months of 1967, 53.8 percent of all West's traffic was interlined and 46.2 percent was local to its own lines. Of the interline freight it handles West is of the opinion that from 85 to 90 percent is subject to diversion by these applications. West believes it is rendering a satisfactory and essential service to the public. In a one week period in October 1966, West handled some 6,699 shipments which purportedly would be affected by one or more of these applications. These shipments originated or were interchanged at New Orleans, Jackson, Mobile, Gulfport, Hattiesburg, Laurel, Meridian, Pascagoula, Birmingham, Memphis and Montgomery. 49.3 percent of the shipments were delivered to the consignees or to connecting carriers within one day and 93.7 percent within two days. Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations.

DEATON, INC. (DEATON) - BIRMINGHAM, ALA.

Protest: - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

Operations: - See under applicants' evidence in the attached report.

Specifically involved are Deaton's operations as a common carrier of general commodities between Atlanta and Birmingham and points within 65 miles of Birmingham, on the one hand, and, on the other, Memphis, New Orleans, and all points in Mississippi; also 27 grants of specific commodities authority. Deaton handles both truckload and less-than-truckload freight. Being an irregular route operator it holds out no firm commitment of scheduled service but informs shippers that normally shipments originating at Atlanta or Birmingham will be delivered in Jackson in the next or second day service.

Interest: - Deaton's operations conducted from its terminals at Anniston, Birmingham, Mobile, Atlanta, Columbus, Greenville, Jackson, Natchez, Vicksburg, Memphis and New Orleans are affected by the applications protested. Eight of these terminal operations are conducted by cartage agents. During two one week periods (one in February 1966 and one in March 1967) Deaton billed at the above terminals an aggregate of over 43 million pounds of freight producing revenues for Deaton of $311,242 (Vicksburg terminal was limited to the 1967 period inasmuch as it was only opened early in 1967). A large portion of this freight would be subject to diversion to one or more of the applicants. Deaton often interlines less-than-truckload freight destined to points in Mississippi which it is authorized to serve if the volume of such traffic does not warrant operation. The volume of traffic from Atlanta and Birmingham to New Orleans and points in Mississsppi is three times that in the reverse direction. Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations.

FLOYD & BEASLEY TRANSFER COMPANY, INC. (FLOYD & BEASLEY) - SYCAMORE, ALA.

Protest: - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

Operations: - Floyd & Beasley is a regular and irregular route common carrier of general and specific commodities—the latter being predominantly textile machinery and textile products—in the States of Alabama, Georgia, South Carolina, and Tennessee. Its authority to transport general commodities includes transportation from Atlanta, Ga., Chattanooga, Tenn., and all points in South Carolina to Birmingham, Ala. The authority to transport textile products includes service from 54 Alabama points to points in Alabama, Tennessee, Georgia, and South Carolina.

Floyd & Beasley is primarily a common carrier of textile products, materials and supplies operating over irregular routes (79 percent of its business). It also is a common carrier of general commodities from points in South Carolina, Atlanta and Chattanooga to Birmingham as well as to certain other Alabama points. Its operating revenue for 1967 was over $3.7 million.

Interest: - Floyd & Beasley interlines substantial tonnage particularly at Birnigham. On shipments destined to Mississippi, Louisiana, Texas, Arkansas, Oklahoma, Missouri and points beyond, Floyd & Beasley is fearful that its present interline traffic may be diverted to the applicants who would transport the shipments to destinations or to interline points nearer the destinations. Any diversion of its present traffic will seriously affect its financial stability.

BAGGETT TRANSPORTATION COMPANY (BAGGETT) - BIRMINGHAM, ALA.

Protest: - Herrin, Roadway, Red Ball, Strickland, Bowman and Jones applications.

Operations: - See under applicants' evidence in the attached report.

Baggett maintains terminals at Atlanta, Columbus, Rome, Anniston, Birmingham, Decatur, Gadsden, Huntsville, Mobile, Montgomery, Opelika, Ozark, Selma, Sylacauga, Tri Cities, Tuscaloosa, Union Springs, Pensacola, New Orleans, Gulfport and Chattanooga. Baggett conducts single-line operations between all of these terminal points and serves intermediate points. It is predominantly a delivery or distribution carrier for the long haul carriers serving Atlanta, Chattanooga, Birmingham and New Orleans. Ninety-five percent of its traffic is less-than-truckload.

Interest: - During the month of May 1967, Baggett handled between the above terminals 55,623 shipments weighing over 55 million pounds and producing a revenue of $564,217. Of these shipments 26,896 were interline shipments weighing over 26.7 million pounds and producing a revenue of $219,009. One or more of the applicants protested conflict with Baggett's operations to some extent, including a number which would conflict with its explosive operations authorized in some 44 States. The extent of the possible diversion was not computed, but the proposed additional competition is considered to be substantial.

GEORGIA-FLORIDA-ALABAMA TRANSPORTATION CO. INC. (GFA) - DOTHAN, ALA.

Protest: - Herrin, Roadway, Red Ball, Floyd & Beasley, Strickland, and Baggett applications.*

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*Protest to the Bowman application withdrawn by petition dated September 30, 1968. GFA, in *Georgia-Florida-Alabama Transp. Co. Extension*, 110 M.C.C. 892 (1969), was granted regular-route, general-commodity authority generally over a network of routes extending between Pensacola, Fla., and Mobile, Ala., on the one hand, and, on the other, Jackson, Hattiesburg, Laurel, and Meridian, Miss. The certificate authorizing such operations, No. MC-61788 (Sub-No. 25), was issued June 2, 1971.

Operations: - GFA is a common carrier of general commodities operating over regular routes between Atlanta on the north and Pensacola and Mobile on the south serving intermediate points; and operating over irregular routes between points in Mississippi, Alabama and Florida within 75 miles of Bay Minette, Ala. It maintains terminals at Dothan, Andalusia, Atlanta, Pensacola, and mobile and agency stations at Fort Walton Beach, Pascagoula and Eufala. It operates 73 tractors, 162 trailers and 52 pickups. It interlines freight with 84 connecting carriers at Atlanta, Andalusia, Dothan, Mobile, Crestview and Pensacola, including seven of the applicants.

Interest: - A substantial amount of the GFA traffic may be subject to diversion by these applications. For example, on May 15, 1967, GFA transported 427 shipments weighing a total of 296,393 pounds between various points on its routes all of which would be subject to diversion if these applications were granted. The record shows that GFA delivered 83.1 percent of these shipments the first day and 98.3 percent by the second day. A similar tabulation for May 19, 1967, shows a total of 440 shipments weighing 222,511 pounds subject to diversion. 88.5 percent of those were delivered the first day and 98.3 percent by the second day.

GFA serves both International Paper Company and Ingalls Shipbuilding Company at Moss Point, Miss. Normally International Paper Company requires through trailer service for its truckload shipments which GFA provides in conjunction with its connecting carriers. GFA also serves Armstrong Cork Company at Pensacola, Fla., which company requires through trailer service in connection with its truckload shipments. Much of this traffic is handled in conjunction with Roadway Express as the interlining carrier at Atlanta. In a 3-month period GFA handled 104 shipments weighing over 2.3 million pounds for Armstrong Cork Company which were interlined at Atlanta. Seventy-one percent was delivered to the interlining carrier the first day and 91 percent by the second day. GFA's interline with Roadway at Atlanta is an important segment of its business. In the 2-month period of September and October 1966, GFA received from Roadway at Atlanta 292 shipments destined to points on its routes for delivery or interline. These shipments weighed 260,076 pounds. Fifty-four percent were delivered the first day and 89 percent by the second day. GFA is not using its equipment to capacity. It is of the opinion that it is performing an adequate service, and believes that diversion of its traffic that may result from a grant of these applications will seriously impair its operations and services.

PILOT FREIGHT CARRIERS, INC. (PILOT) - WINSTON-SALEM, N. C.

Protest: - Roadway and Bowman applications.

Operations: - Pilot is a common carrier of general commodities and various specific commodities operating in the States of Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Ohio and District of Columbia. It maintains 32 terminals throughout that territory. It operates 455 tractors, 917 trailers and 152 straight trucks. Its operating revenue in 1966 was over $26 million.

Interest: - Pilot participates in the transportation of freight between points in the above area and points in the Gulf Coast and Southwestern area proposed to be served by Roadway and Bowman. Atlanta is Pilot's primary gateway point for interchange of such traffic, with the gateways of Fort Oglethorpe and Savannah, Ga., Greenville, S. C., and Charlotte, N. C., handling lesser amounts of traffic. In 1966 Pilot received from interlining carriers at these terminals over 43 million pounds of freight and interlined to other carriers over 47.7 million pounds. This included interlining with four of the applicants, namely, Baggett, Deaton, Herrin and Johnson. Of the other 10

carriers with which Pilot interlined at these points, nine are protestants in these proceedings.

Pilot is not operating to capacity and in fact, it has an imbalance of freight at Atlanta to the extent of requiring operation of about 20 empty vehicles weekly out of that point. A diversion of freight will be detrimental to Pilot's operations.

THE MASON AND DIXON LINES INCORPORATED (MASON & DIXON) - KINGSPORT, TENN.

Protest: - The Bowman application.

Operations: - Mason & Dixon is a common carrier of general commodities operating over routes extending between Chicago and Memphis on the west, Birmingham and Atlanta on the south, and Scranton and the New York City area on the north and east. It maintains some 30 terminals throughout this area and operates 187 road tractors, 1,244 trailers, and 246 pickup units. Its operating revenue for 1966 was over $39 million.

Interest: - Mason & Dixon handles a large amount of interline freight moving to or from points in Arkansas, Texas, Oklahoma and Mississippi, on the one hand, and, on the other, points on its routes. During the first 24 weeks (6 accounting periods) in 1967, Mason & Dixon transported between its northeast area and the southwestern States as above noted 32,309 shipments weighing 53.4 million pounds and producing revenue of over $1 million. In the same period between the south and southeastern points and the southwestern area it transported 3,986 shipments weighing over 5 million pounds producing revenue of $71,109. Its transcontinental traffic during this period moving between the eastern area and the west coast area amounted to 5,164 shipments weighing about 6.5 million pounds producing revenue of $94,983. A grant of the Bowman application will subject a very substantial portion of this traffic to diversion.

GEORGIA HIGHWAY EXPRESS, INC. (GHE) - ATLANTA, GA.

Protest: - The Herrin, Red Ball, Strickland, Baggett, Bowman and Jones applications.

Operation: - GHE is a common carrier of general commodities operating over both regular and irregular routes in Alabama and Georgia and over regular routes in eastern Tennessee. It maintains terminals at 20 points in Georgia, 10 in Alabama and 3 in Tennessee. GHE operates 280 tractors, 788 trailers and 198 pickup units. Its operating revenue for 1966 was over $15.7 million.

Interest: - GHE fears that granting of these applications will result in diversion of interline traffic it is now handling to or from the territory for which applicants are seeking authority. GHE maintains interline facilities to handle this traffic at Atlanta, Birmingham, Mobile and Chattanooga.

CAMPBELL SIXTY-SIX EXPRESS, INC. (CAMPBELL SIXTY-SIX) - SPRINGFIELD, MO.

Protest: - All applications except Bowman's.[10]

Operations: - Campbell Sixty-Six is a common carrier of general commodities operating over routes extending between Chicago on the north, Kansas City and Tulsa on the west, Birmingham and Mobile on the east, and New Orleans and Baton Rouge

[10] Protest of Bowman application withdrawn subsequent to hearing.

on the south.[11] It operates 30 terminals and 2 agency stations throughout its routes which include 12 in Mississippi, 7 in Missouri, 4 in Arkansas, 2 each in Kansas, Louisiana and Alabama, and 1 each in Illinois, Tennessee and Oklahoma. It operates 374 tractors, 738 trailers and 200 pickup and delivery trucks. Its operating revenue in 1966 was almost $21.8 million.

Interest: - Some traffic moving to or from each of Campbell Sixty-Six's terminals is subject to diversion by these applications. For most of the terminals new direct single-line competitive services are being proposed. Campbell Sixty-Six is of the opinion that it is performing a reasonably adequate and satisfactory service and is capable of handling additional freight. Its offered service between Birmingham and its direct points in Mississippi varies from overnight to second day and between Birmingham and Missouri points second or third day service is offered. Data reflecting operations during certain test periods reflect on time performance on shipments handled ranging from 71.6 to 82.4 percent. Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants. However, in this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender it freight for certain Mississippi points it is authorized to serve.

Shippers Express, a motor common carrier of general commodities operating within the State of Mississippi between Jackson, on the one hand, and, on the other, points in Mississippi within 100 miles of Jackson, appeared as a witness supporting the protest of Campbell Sixty-Six as well as those of certain other protestants. Shippers Express serves primarily as a distribution carrier on interstate traffic interlined with other carriers including some of the applicants at Jackson. It maintains terminals at Jackson, Natchez, Vicksburg, Greenville and Philadelphia, Miss. It operates 12 tractors, 26 trailers and 23 pickup trucks.

JACK COLE COMPANY (JACK COLE) - DIXIE HIGHWAY EXPRESS, INC. (DIXIE) - BIRMINGHAM, ALA.

Protest: - All applications.

Operations: - Jack Cole and Dixie are motor common carriers of general commodities as well as of specific commodities. Jack Cole controls Dixie and has been operating Dixie since January 1965.[12] Jack Cole's operation extends primarily between

[11] In February 1969, Campbell Sixty-Six received a certificate from this Commission authorizing extension of its operations to Atlanta restricted to the transportation of traffic originating at or destined to or interlined with other carriers at authorized service points on its presently authorized routes in Mississippi and Missouri except Gulfport, Miss., and Kansas City and St. Louis, Mo., and points within the commercial zones of each. (No. MC-75320 (Sub-No. 106)). This certificate was canceled by certificate No. MC-75320 (Sub-No. 150), issued April 23, 1970, authorizing the transportation of general commodities, with exceptions, between Birmingham and Atlanta, serving all intermediate points and the off-route point of Bessemer, Ala., and those located within 5 miles of Birmingham and Atlanta. The Sub-No. 150 rights, which were formerly held by United Motor Freight Terminal, Inc., were authorized to be merged with those of Campbell pursuant to an order of the Commission in No. MC-F-10585, entered November 14, 1969. All of the former's certificates have been canceled. Pursuant to an order of the Commission in No. MC-F-10219, entered November 8, 1968, Campbell was issued a certificate, No. MC-75320 (Sub-No. 144), on April 16, 1969, authorizing the extension of its operations between Tulsa, Okla., and Wichita Falls, Tex.

[12] On November 15, 1967, R. E. Short, who controls Admiral-Merchants Motor Freight, Inc., of Minneapolis, Minn., acquired control of both of these companies pursuant to authority of the Commission in No. MC-F-9871. As indicating in appendix C and appendix D, footnote 10, Cole and Dixie have merged and the surviving corporation's name is Jack Cole-Dixie Highway Company.

numerous Alabama points, on the one hand, and, on the other, points in Tennessee, Indiana, Ohio, a portion of Illinois including Chicag · and the Detroit, Philadelphia and New York City areas. Dixie's operation is over a network of routes primarily between New Orleans, La., and Jackson, Miss., on the west, and Atlanta and Columbus, Ga., on the east, passing through such principal intermediate points as Meridian, Laurel and Hattiesburg, Miss., Anniston, Birmingham, Montgomery, Opelika, Selma and Tuscaloosa, Ala. Together these protestants maintain 28 terminals and agency stations throughout the territory served. They operate a total of 194 tractors and 755 trailers over the road, and for city work, 162 pickups, 142 tractors and 45 trailers. Their combined operating revenue for 1966 was almost $21 million.

Interest: - Jack Cole and Dixie handle a substantial amount of freight which would be subject to diversion by one or more of the applicants. In the month of May 1967, 40,492 of the shipments handled by these protestants weighing over 47.4 million pounds and producing revenue for Jack Cole and Dixie of $911,059 would be subject to diversion through these applications. This constitutes approximately 52 percent of the total combined revenues of Jack Cole and Dixie for the month. Of these shipments, 5,716 weighing some 5.6 million pounds and producing revenue of $97,822 were interlined between Jack Cole or Dixie and the applicants. By far the largest amount of this interline was with Red Ball at Jackson, Miss. Interline with Red Ball accounts for about 10 percent of the operating revenue of Dixie and almost 4 percent of the combined operating revenue of Jack Cole and Dixie.

Jack Cole and Dixie hold out to the public a second day service between their terminal points in Alabama, Georgia, Louisiana, Mississippi and Tennessee. Faster service is not held out because the freight is routed through the Birmingham terminal as a break-bulk station. This involves some delay resulting in the greater portion of the freight between these terminals receiving second day service. The carriers have experienced no substantial objection to the service from their shippers. Records of performance during a one week period in May 1967 discloses on time performance out of the Atlanta terminal ranging from 58 to 93.7 percent of the shipments handled; from the Birmingham terminal from 72.6 to 100 percent on time performance, from the New Orleans terminal from 87 to 100 percent; from the Jackson terminal from 20 to 89 percent; from the Memphis terminal from 30 to 100 percent; and from the Meridian terminal from 25 to 67 percent. Of the total 1,136 shipments involved in the one week test period, 798 or 70 percent received on time service, and 94 percent were delivered by the third day.

Jack Cole-Dixie have an imbalance of freight moving westbound. In may 1967 they operated 129 empty vehicles from New Orleans, Jackson, Meridian and Memphis back to the Atlanta and Birmingham areas. They express the view that they are performing a reasonably adequate service to the public and that the grant of these applications not only will divert from them traffic essential to their continued operation, but also will result in reducing even more the freight available for eastbound operations from the four points mentioned to the Birmingham and Atlanta areas.

BROWN TRANSPORT CORP. (BROWN) - ATLANTA, GA.

Protest: - The Herrin application.

Operations: - Brown is a common carrier by motor vehicle of general commodities operating as here relevant over routes extending between Knoxville, Tenn., on the north and Augusta and Savannah, Ga., in the south and east, serving numerous intermediate points including Etowah and Maryville, Tenn., and Atlanta, Athens and Macon, Ga. It operates 12 terminals throughout its territory including 2 in Tennessee

and 10 in Georgia. It operates 225 trailers, 81 road tractors and 28 city tractors as well as 96 pickup and delivery units. Its operating revenue in 1966 was $5 million. Brown solicits traffic moving between points on its system, on the one hand, and, on the other, points in Alabama, Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas, operating primarily through the Atlanta gateway.

Interest: - Brown has joint through routes and rates with Herrin over the Macon gateway. It opposes Herrin's extension of operation into Atlanta which may well divert a considerable amount of freight. During June 1965, Herrin delivered to Brown in Macon for movement to Atlanta alone some 185 shipments weighing approximately 200,000 pounds. This traffic was diverted from Brown after Herrin filed this application. [As noted in Appendix A-1, page A-4, in January 1968 Herrin extended its operation from Macon into Atlanta through a purchase of operating rights.]

EAST TEXAS MOTOR FREIGHT LINES, INC. (ETMF) -[1]
DALLAS, TEX.

Protest: - All applications except that of Roadway.

Operations: - ETMF is a common carrier of general commodities operating over routes extending from its Dallas-Fort Worth base area southward to San Antonio, Houston, Port Arthur and Beaumont, Tex., eastward through Shreveport or Memphis to Birmingham and Atlanta, and northward through Little Rock and St. Louis to Chicago. Its operation into Atlanta and Birmingham was begun in April 1965 following purchase of those rights. ETMF maintains 19 terminals, 12 of which are located at Texas points. It operates a total of 581 tractors, 1,011 trailers, and 388 straight trucks. Its operating revenue for 1966 was $34.3 million. ETMF predominantly handles less-than-truckload freight. In 1966 it transported 2,123,486 shipments of which only 28,317 were truckloads and the average weight per shipment was 886 pounds. An analysis of freight billed at Dallas and transported to Atlanta in the week of June 26, 1967 (825 shipments) disclosed that 35.3 percent weighed less than 100 pounds; and of the freight billed at Atlanta and transported to Dallas in the same week (814 shipments), 25.9 percent weighed less than 100 pounds. In 1966 claims were filed on only one percent of the shipments handled and the ratio of claims paid to revenue was 1.56 percent.

Interest: - The nine applications being protested seek authority which duplicates that of ETMF to a substantial extent and will subject a large portion of its tonnage to possible diversion if granted. For example, in the first six months of 1967, from Atlanta to its Texas, Louisiana, Arkansas and Memphis terminals, ETMF transported 100,228 shipments weighing about 65.3 million pounds, and in the reverse direction from those terminals to Atlanta it transported 73,729 shipments weighing about 77.5 million pounds. From Birmingham there were 30,350 shipments weighing 27.8 million pounds and to Birmingham 26,664 shipments weighing 23.7 million pounds. Of all these, 78,588 shipments weighing a total of 62 million pounds moved between its Atlanta terminal, on the one hand, and its terminals at Dallas, Fort Worth and Houston on the other, and 24,925 shipments weighing a total of 19.4 million pounds

[1] In a report and recommended order in No. MC-41432 (Sub-No. 103), East Texas Motor Freight Lines, Inc., Extension—Mississippi and Louisiana Points, served March 26, 1971, an examiner found that the public convenience and necessity requires operation by East Texas, over regular routes, of general commodities, with the usual exceptions, between Birmingham and Shreveport, serving the intermediate points of Monroe and West Monroe, La., and Jackson, Meridian, and Vicksburg, Miss., and the off-route points of specified plantsites, subject to certain restrictions. The proceeding is pending on exceptions

moved between its Birmingham terminal, on the one hand, and its Dallas and Fort Worth terminals on the other.

ETMF interlines freight with other carriers to provide joint through service. It maintains joint rates and through routes with 36 carriers at Birmingham including applicants Baggett, Bowman, Deaton and Floyd & Beasley; with 35 carriers at Atlanta including Baggett, Bowman and Johnson; with 24 carriers at Houston including Herrin, Red Ball and Strickland; with 30 carriers at Dallas including Herrin, Jones, Red Ball, Roadway and Strickland; with 23 carriers at Little Rock including Jones; with 12 carriers at Memphis including Bowman, Deaton, Herrin, Jones, Red Ball and Roadway; and with 12 carriers at Shreveport including Deaton, Herrin, Red Ball and Strickland. In the first six months of 1967 ETMF received a total of 8,866,311 pounds of freight at the three interchange points of Atlanta, Birmingham and Memphis from applicants Bowman, Johnson, Red Ball, Jones, Baggett, Floyd & Beasley and Deaton. Nearly one-half (4,239,915 pounds) was received from Bowman.

ETMF holds out to the public second day service on less-than-truckload freight between its Atlanta and Birmingham terminals, on the one hand, and, on the other, its terminals at Dallas, Fort Worth, Houston, Texarkana, Shreveport, Little Rock; and also between Birmingham, on the one hand, and, on the other, Beaumont, Henderson, Longview, Lufkin, Marshall and Tyler, with third day service between these latter points and the Atlanta terminal. Third day service also is offered between the Atlanta and Birmingham terminals, on the one hand, and, on the other, its San Antonio and Atlanta, Tex., terminals. A review of one week's traffic between the Atlanta and Dallas terminals, the Atlanta and Houston terminals, the Birmingham and Dallas terminals, and the Birmingham and Houston terminals, disclosed a total of 3,759 shipments handled of which 2,958 or 78.7 percent were delivered on time, that is second day or better service.

ETMF is of the opinion it is rendering a reasonably adequate and satisfactory service to the public. It is not operating at capacity and is striving to obtain additional traffic. It now has the competition of a number of single-line services between its terminal points as well as numerous competitive joint-line services. Any diversion of its present freight which may result from the grant of these applications will impair its ability to continue its present standard of service.

TRANSCON LINES (TRANSCON) -
LOS ANGELES, CALIF.

Protest: - All applications except that of Roadway.

Operations: - Transcon is a motor common carrier of general commodities authorized to operate over a network of routes extending between Atlanta and Birmingham in the Southest through Memphis, Little Rock, Dallas, Fort Worth, Amarillo, Houston, Oklahoma City, Ponca City, Tulsa, St. Louis, Kansas City, Wichita and on to the West Coast; also between points in the New York City, Philadelphia, Wilmington, Baltimore and Washington area through the midwest and southwest points to the West Coast. Its authority to operate between these eastern points and the Southwest on a single-line basis was not acquired until after the hearing on these applications was begun. Transcon maintains 46 terminals throughout the area and operates 786 tractors and 2,097 trailers in over-the-road service, and 406 straight trucks, 476 tractors and 269 trailers in pickup and delivery service. Its operating revenue for 1966 was over $66 million and for the first quarter of 1967 almost $19 million.

In 1966 Transcon transported 1,942,282 less-than-truckload shipments and only 38,053 truckload shipments. Sixty-seven percent of its revenue was derived from less-

than-truckload freight. Although authorized to serve many points in Arkansas and Oklahoma, Transcon does not offer less-than-truckload service to any points other than Little Rock, Ark., and Oklahoma City, Tulsa and Ponca City, Okla., and their commercial zones. It interlines freight to other points in those States. Similarly, in Georgia and Alabama it generally interlines freight to points beyond the Atlanta and Birmingham area even though it is authorized to serve the points, unless there is a sufficient volume to warrant the operation. Its operation from Atlanta to Kansas City is necessarily by way of Oklahoma City or Tulsa involving some circuity. As a result Transcon interlines some of that traffic at Memphis with Jones. The average length of haul for Transcon in 1967 was 1,461 miles.

Interest: - Joint-line shipments are a very important portion of Transcon's freight. In 1966, 67 percent of its total shipments were handled in joint-line service producing 51.8 percent of its total operating revenue. At 10 of its terminals involved in these proceedings, namely, Atlanta, Birmingham, Dallas, Houston, Kansas City, Little Rock, Memphis, Oklahoma City, Tulsa and Wichita, Transcon interlined with connecting carriers in the month of May 1967 almost 60 million pounds of freight. This includes 1,217,179 pounds with Bowman and 121,787 pounds with Johnson at Atlanta; 435,635 pounds with Baggett and Floyd & Beasley at Birmingham; 1,026,305 pounds with Herrin, Red Ball and Strickland at Dallas; and 137,591 pounds with Bowman at Memphis.

Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data reflecting tonnage and revenue involved from such freight for the year 1966.

TONNAGE—1966

	Weight	Revenue
Atlanta	*Pounds*	*Dollars*
1. (a) From Atlanta to Dallas and Houston	33,744,555	$799,483
(b) From Dallas and Houston to Atlanta	25,914,325	569,545
2. (a) From Atlanta to Memphis, Arkansas, Oklahoma, Missouri and Kansas	40,279,280	813,875
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Atlanta	31,956,485	714,875
3. (a) From Atlanta to Amarillo	4,385,305	133,522
(b) From Amarillo to Atlanta	1,010,719	28,406
4. (a) From Atlanta to West Coast	63,815,421	2,636,381
(b) From West Coast to Atlanta	52,067,563	3,123,730
Total Atlanta outbound	142,224,564	5,383,561
Total Atlanta inbound	110,949,045	4,436,556
Birmingham		
1. (a) From Birmingham to Dallas and Houston	5,741,068	104,288
(b) From Dallas and Houston to Birmingham	3,452,514	79,724
2. (a) From Birmingham to Memphis, Arkansas, Oklahoma, Missouri and Kansas	3,540,412	36,367
(b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Birmingham	9,678,391	94,464
3. (a) From Birmingham to Amarillo	2,785,135	61,745
(b) From Amarillo to Birmingham	635,731	13,125
4. (a) From Birmingham to West Coast	33,166,550	1,645,397
(b) From West Coast to Birmingham	20,449,658	1,180,537
Total Birmingham outbound	45,233,165	1,847,797
Total Birmingham inbound	34,246,294	1,367,850

Operation between the Eastern Seaboard and the Southwest was not begun until the latter half of 1966. For the month of May 1967 Transcon transported between its Dallas and Houston terminals, on the one hand, and, on the other, its terminals at Richmond, Va., Baltimore, Md., Carlstadt, Metuchen, and Trenton, N. J., Newburgh, N. Y., Philadelphia, Pa., and Wilmington, Del., a total of 3,426,928 pounds producing revenue of $130,938. This traffic too is subject to diversion.

Transcon is of the opinion that it is performing a satisfactory service to the public and is actively soliciting additional freight. A traffic study of shipments handled during certain periods in May 1966 between various of the Transcon terminals depicting the elapsed time from the Transcon billing date to the date the shipment was delivered to the consignee or a connecting line discloses the following data with respect to certain of the key terminals here involved.

PERIOD MAY 9 THROUGH MAY 21, 1966 EXCEPT AS NOTED BY • WHICH INDICATES PERIOD AS MAY 9 THROUGH MAY 13, 1966

From	To	Number of shipments	Service from billing date	
			2d day or better	3d day or better
			Percent	*Percent*
Birmingham	Oklahoma City	245	78.7	97.1
Do	Tulsa	173	83.8	97.6
Do	Dallas	131	34.3	91.6
Atlanta	Oklahoma City	446	60.7	73.
Do	Tulsa	310	77.8	95.1
Do	Dallas	1,427	56.7	98.8
Oklahoma City	Birmingham	109	67.	90.8
Tulsa	------do	172	59.9	86.
Dallas	------do	167	47.3	85.
Little Rock	------do	4	75.	75.
Oklahoma City•	Atlanta	42	28.6	52.4
Tulsa•	------do	78	74.3	92.3
Dallas•	------do	222	74.8	86.

ROADWAY EXPRESS, INC. (ROADWAY) [1]
AKRON, OHIO

Protest: - All applications except its own.

Operations: Roadway holds authority to operate as a motor common carrier of general commodities with the usual exceptions over an extensive network of routes in States generally east of and including Amarillo, Tex., Kansas City, Kans., and Milwaukee, Wis., except Florida, Maine, New Hampshire, and Vermont. It also is authorized to transport both general commodities and specified commodities over irregular routes.

Briefly Roadway's interconnecting network of regular routes extends along the Eastern Seaboard from Boston through Atlanta to Montgomery, Ala., with service at such major points as Providence, R. I., New Haven, Conn., New York City, Scranton, Harrisburg and Philadelphia, Pa., Baltimore, Md., Richmond, Va., and most major industrial cities and areas in the Carolinas and Georgia; also within the central and

[1] In No. MC-F-10178, *Roadway—Control—West Brothers* (not printed), decided June 26, 1969, the Commission approved Roadway's application to control West Brothers, Inc., a protestant in this proceeding.

southern States serving major industrial cities and areas in upper New York State, Ohio, Michigan, Illinois and Indiana, Milwaukee, Wis., St. Louis, Mo., Nashville, Memphis, and Chattanooga, Tenn., Atlanta, Ga., and Gadsden, Birmingham and Montgomery, Ala.; and also between those areas and the Southwest serving such major points as Kansas City, Tulsa, Oklahoma City, Dallas, Houston, Amarillo and San Antonio, Tex. As noted in Appendix A-2 subsequent to the close of the hearing it acquired control of protestant West Brothers, Inc.

During 1966 Roadway transported a total of 4,996,034 shipments. Of these, 58.9 percent weighed less than 300 pounds and 83.9 percent weighed under 1,000 pounds. Its 119 terminals include its major break-bulk terminals as well as the satellite terminals which for the most part feed through one of the major break-bulk terminals. Direct loading from origin to destination is the usual practice where the volume of freight warrnts; otherwise the shipments are routed through one of the break-bulk terminals.

Interest: - A large portion of Roadway's present traffic will be subject to diversion if these applications are granted. For example, in a two week period May 29 through June 11, 1966, Roadway transported over 16,000 shipments weighing in excess of 13 million pounds moving between Texas points, on the one hand, and, on the other, points in Georgia, Alabama, North Carolina, South Carolina, Tennessee, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. All of this traffic would be subject diversion to one or more of the applicants. Roadway maintains that this freight is now subject to numerous single- and joint-line competitive services and that Roadway performs a satisfactory service for the public.

Roadway has established certain service standards which it holds out to the public. These are said to be realistic standards which form the major basis for Roadway's incentive monetary awards to its employees. Briefly the Roadway schedules to and from Dallas and Houston are third morning for Alabama, Tennessee and Georgia points with the exception of Atlanta which is second morning. Between Texas points and the satellite terminal points in North Carolina and South Carolina the standard is four days, and three days from or to the major terminals of Greenville, Spartanburg, Charlotte and Winston-Salem. Its schedules are four days between the Texas points and points in Virginia, Kentucky, Maryland, Pennsylvania, New Jersey and the major points in upper New York State. They are five days to and from the satellite upstate New York points and all of New England. Employees at the various terminals responsible for "on time" performance under these standards receive incentive awards on the basis of performance within the standard. In 1966 Roadway paid approximately $3 million in incentive awards. These service standards are constantly reviewed so that they will not be too stringent to destroy the incentive, nor so liberal as to be too costly to the company. A review of the elapsed time from the Roadway billing date to delivery of the freight to the consignee or connecting carriers for these 16,000 shipments indicates a very substantial on time performance under the Roadway standards.

In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance.

HERRIN TRANSPORTATION COMPANY (HERRIN)[1] - HOUSTON, TEX.

Protest: - The Red Ball, Deaton, Floyd & Beasley, Strickland, Baggett and Jones applications.

Operations: - See under applicants' evidence in the attached report.

In brief Herrin's authority extends from Dallas-Fort Worth and Houston on the west to Little Rock and Memphis on the north; also through Shreveport, La., Jackson, Miss., and Montgomery, Ala., to Columbus, Ga.; and along the Gulf Coast through Beaumont, Port Arthur, New Orleans and Pensacola to Jacksonville, Fla., and Brunswick and Savannah, Ga., on the East Coast. It serves 16 points in Arkansas, 50 in Florida, 125 in Georgia, 237 in Louisiana, 15 in Tennessee and 155 in Texas.

Interest: - A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted. During the last three months of 1966 the freight handled through its various terminals which is considered subject to diversion by these application is as follows:

Herrin Freight affected by applications period - October, November, December 1966

From (terminal)	Number of shipments	Weight	Herrin revenue
		Pounds	
Dallas	4,794	4,785,017	$91,420
Houston	7,970	9,201,446	159,834
Macon	3,984	5,335,721	96,283
Pensacola	467	2,408,350	27,405
Savannah	1,641	2,328,235	48,726
Jacksonville	5,704	6,296,718	130,336
Shreveport	325	876,505	15,351
Monroe	256	302,892	4,967
Baton Rouge	339	2,912,990	22,757
Lake Charles	649	631,535	85,862

ET&WNC TRANSPORTATION COMPANY (ET&WNC) - JOHNSON CITY, TENN.

Protest: - The Baggett and Bowman applications.

Operations: - ET&WNC is a motor common carrier of general commodities operating over regular routes extending between New York City, Philadelphia, Wilmington, Baltimore and Washington on the north and east, Little Rock, Ark., on the west, and Greenwood and Greenville, Miss., on the south, serving points in North Carolina, South Carolina and Tennessee, northwest Georgia, northwest Alabama,

[1] As noted in footnote 1 of appendix A, Herrin has been merged into McLean and the latter has been substituted for the former herein. In a report and recommend order in No. MC-F-10260 *McLean Trucking Company—Purchase—S.A. Harrison*, served November 26, 1969, which became effective on January 21, 1969, McLean was authorized to purchase certain authority. Pursuant thereto, a certificate in No. MC-31389 (Sub-No. 120) was issued on August 27, 1970, authorizing regular-route service between Nashville, Tenn., and Atlanta, serving intermediate and off-route points in Davidson County, Tenn. Additionally, McLean, as substituted applicant for Herrin in No. MC-31389 (Sub-No. 121), which certificate was issued March 27, 1970, was granted authority to transport general commodities between Memphis, Tenn., and Baton Rouge, La.

western Mississippi and northeastern Akransas. It maintains 33 terminals including 14 in Tennessee, 7 in North Carolina, 4 in Mississippi, 2 each in South Carolina and Arkansas and 1 each in Alabama, Maryland, Pennsylvania and New York. It operates 271 tractors, 539 trailers and 133 pickup and delivery trucks. Its operating revenue for 1966 was over $11.5 million.

Interest - ET&WNC protests the Bowman proposal to serve Little Rock and Jonesboro, Ark., and Greenwoood and Greenville, Miss., and its proposal to serve points west of Memphis involving freight which ET&WNC handles on an interline basis primarily through its Memphis terminal. Its protest of the Baggett application includes primarily the proposal to serve between certain points in Texas and Louisiana, on the one hand, and Chattanooga and points in north Alabama common to both carriers, on the other. Those points include Florence, Tuscumbia, Muscle Shoals, Sheffield and Scottsboro.

A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. During the month of May 1966 ET&WNC transported some 2,747 shipments weighing over 2 million pounds to or from the following of its terminals which would be subject to diversion.

ET&WNC Freight subject to diversion by Bowman & Baggett applications - May 1966

ET&WNC terminal	Number of shipments	Weight
		Pounds
Little Rock, Ark.		
Outbound	450	216,699
Inbound	617	734,747
Jonesboro, Ark.		
Outbound	69	19,495
Inbound	74	76,077
Greenville, Miss.		
Outbound	176	193,337
Inbound	128	177,040
Greenwood, Miss.		
Outbound	96	34,204
Inbound	102	64,753
Memphis, Tenn.		
Outbound	660	102,535
Inbound	435	546,921

This is valuable and necessary traffic and any loss will adversely affect ET&WNC. Additionally, ET&WNC has the equipment and facilities to handle increased tonnage over its lines.

UNITED MOTOR FREIGHT TERMINAL, INC. (UNITED) - BIRMINGHAM, ALA.

Protest. - The Herrin, Red Ball, Floyd & Beasley, Strickland, Johnson and Jones applications.

*See footnote 11, supra

Operations: - United is a motor common carrier of general commodities operating over regular routes between Atlanta and Birmingham serving intermediate points and off-route points within 15 miles of Atlanta and those within 5 miles of Birmingham. It maintains terminals at Atlanta, Ga., Birmingham, Anniston and Heflin, Ala. It operates 48 trailers, 14 over-the-road tractors, 17 city tractors and 31 pickup trucks. During 1966 it transported 143,809 less-than-truckload shipments and 2,122 truckload shipments, and its operating revenue was over $1.3 million. United has interline arrangements with 39 connecting carriers at Atlanta and 35 at Birmingham. Over 60 percent of its traffic is interlined.

United holds out overnight service between Atlanta and Birmingham, operating about six schedules per day from Birmingham to Atlanta and eight or nine in the reverse direction from Atlanta to Birmingham. This imbalance has necessitated the return of 8 to 10 empty vehicles per week from Birmingham. During two different one week test periods United transported an aggregate of 1,264 shipments from Birmingham to Atlanta of which 86.8 percent received overnight service, and 96.8 percent were delivered by the second day. In the same periods United transported an aggregate of 3,978 shipments from Atlanta to Birmingham of which 95.6 percent received overnight service and 98.6 percent were delivered by the second day.

Interest: - Three of the applicants (Strickland, Red Ball and Jones) propose a service between Atlanta and Birmingham which will be directly competitive with that of United. In addition, United interlines substantial freight moving to or from Louisiana and Texas points much of which traffic will be subject to diversion to the proposed single-line services of the applicants. For some years United has worked closely with Mercury Freight Lines which operates between Birmingham, on the one hand, and, on the other, Dallas, Fort Worth, Houston and Beaumont, holding out to the public a third day service from Atlanta to these Texas points on less-than-truckload freight. A review of the shipments during the previously noted two one week test periods, disclosed that of the 214 shipments transported by the Mercury Freight/United joint-line service from Texas points to Atlanta, 66.8 percent were delivered on time (within the third day) and 93 percent were delivered by the fourth day.

United is a relatively small short line (approximately 165 miles) carrier which now has substantial single-line competition for freight moving between Atlanta and Birmingham and also single-line competition for its joint-line services in connection with freight moving between Atlanta and the Texas points. It is in a position to handle additional freight. Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United.

RED BALL MOTOR FREIGHT, INC. (RED BALL) - DALLAS, TEX.

Protest. - The Herrin Roadway, Deaton, Floyd & Beasley, Strickland, Baggett, Bowman and Johnson applications.

Operations: - See under applicants' evidence in the attached report.

In brief Red Ball is a motor common carrier of general commodities operating over a network of routes within the States of New Mexico, Colorado, Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Mississippi, Alabama, Kansas and Missouri. It operates 654 tractors, 1,591 trailers, and 712 pickup trucks. Its operating revenue in 1966 was over $41.6 million (73 percent of which was derived from less-than-truckload freight and 27 percent from truckload). It operates 93 terminals throughout its routes and serves 136 points in Arkansas, 24 in Alabama, 630 in Louisiana (153 of

which are intrastate only), 541 points in Texas, 112 points in Colorado, 83 points in New Mexico, and Kansas City, Kans.-Mo., and Memphis, Tenn. It maintains interline arrangements with a large number of carriers at various points on its routes including most of the applicants.

Interest: - Applicants are proposing competitive single-line services between points which Red Ball now serves. In addition, they propose services between Atlanta and Birmingham and points now served by Red Ball which duplicate the proposal of Red Ball as an applicant. It is Red Ball's position that its present services are adequate and satisfactory to meet any public need. Red Ball holds out to the public a second day service between Dallas, Tex., and Jackson, Miss.; also between Mobile, New Orleans and Baton Rouge, on the one hand, and, on the other, Houston, Beaumont, Port Arthur, Orange and Dallas; and also between Memphis, on the one hand, and, on the other, Dallas, Houston, New Orleans, Kansas City and Baton Rouge. It offers a first day service between Dallas, on the one hand, and, on the other, Monroe and Shreveport, La., El Dorado and Crossett, Ark., Jackson, Miss., and Baton Rouge, La. During the two months of March and July 1967 Red Ball transported an aggregate of 4,797 shipments from Dallas to Jackson, Miss., of which 85.2 percent received on time delivery to consignees or connecting carriers (not more than second day service) and 97.5 percent were delivered by the third day. In July 1967 Red Ball transported 432 shipments from Baton Rouge to Memphis delivering 85.6 percent on time (by the second day) and 93.5 percent by the third day. Data exhibiting service performance between other points was not furnished.

Red Ball expresses the view that if additional authority is to be granted for single-line service between Atlanta and Birmirgham, on the one hand, and points in Louisiana, Mississippi, Arkansas, Texas, Kansas and Missouri, on the other, as sought by these applicants, Red Ball is the appropriate recipient of such authority because of its extensive coverage of cities and communities in these States and its ample terminal and operating facilities and financial resources which would enable it to provide single-line services far more extensive in the southwest territory than those proposed by any of the other applicants.

RYDER TRUCK LINES, INC. (RYDER) - JACKSONVILLE, FLA.

Protest: - All applications.

Operations: - Ryder is a motor common carrier of general commodities operating over a network of routes extending between Miami, Fla., New Orleans, La., and Houston, Tex., on the south, Shreveport, La., Memphis, Tenn., and St. Louis, Mo., on the west, Milwaukee, Wis., Chicago, Ill., Indianapolis, Ind., Cincinnati, Ohio and Roanoke, Va., on the north, and Raleigh and Charlotte, N. C., and Jacksonville, Fla., on the east. Since April 1966 Ryder has controlled Harris Express, Inc. (Harris), who also is a motor common carrier of general commodities with regular routes extending between the New York City area on the north and Greenville, S. C., on the south by way of Philadelphia, Baltimore, Charlotte and Greensboro, N. C., among other important points. It is also authorized to serve substantial areas in North Carolina, South Carolina, Pennsylvania and New Jersey

Prior to August 1965, Ryder was owned by Ryder System, Inc. Since that time it has been owned by International Utilities, Inc., which in turn is owned by International Utilities Corporation. Following the change in ownership there have been a number of changes in management and operations.

Ryder operates 568 over-the-road tractors, 1,742 over-the-road trailers, 499 pickup trucks, 627 pickup tractors and 549 pickup trailers. Harris Express operates 50 over-

the-road tractors, 136 over-the-road trailers, 26 pickup tractors, 6 pickup trailers a 25 pickup trucks. Ryder's operating revenue for the first six months of 1967 was abo $28 million. Ryder operates 60 terminals and 18 agency terminals on its routes, a Harris operates 10 terminals.

Ryder handles mainly less-than-truckload shipments and where the volume freight warrants it operates direct schedules between its terminals. Where the traf volume does not warrant, it will operate through one of its break-bulk terminals f the purpose of consolidating freight. It serves much of its territory through t operation of peddle runs to the smaller towns and communities near its terminals. times it also interlines freight with other carriers to some points it is authorized serve directly where, considering the volume and flow of traffic involved, su interline service will result in a faster and more satisfactory handling of the freight. maintains connecting line concurrences with many carriers but for the most pa limits participation in through rates to two line hauls.

Interest: - Ryder opposes the portions of these 10 applications that would enab the applicants to operate between points in Texas, Louisiana or Mississippi, on t one hand, and, on the other, points in North Carolina, South Carolina, Georg Florida, Tennessee and Alabama; also between points in Louisiana, on the one han and, on the other, points in Illinois, Indiana, Kentucky, Ohio and Wisconsin; a between Memphis and Atlanta, Ga., or points in Florida. In connection with operation of Harris Express, it is also opposed to the applications (particularly tho of Bowman, Roadway and Johnson) which will enable those carriers to opera between the Harris territory in New York, New Jersey, Pennsylvania, the District Columbia, Maryland, Delaware, Virginia, North Carolina and South Carolina, on t one hand, and, on the other, points sought to be served in Louisiana, Mississippi a Texas that are served by Ryder.

During a one week test period in March 1966 Ryder transported some 7,2 shipments weighing over 8.9 million pounds between certain points on its routes the area most involved in these applications. All of this freight is considered to subject to diversion if these applications are granted. On an annual basis Ryd estimates that this volume of freight subject to diversion will amount to approximate $7.5 million in revenue to Ryder. This is exclusive of any of the Harris shipmen which would be affected by these applications.

Ryder has established certain service standards which it holds out to the publi These standards are applicable not only to the terminal cities specified but also to t areas served by those terminals. For example, the Houston terminal also serves Tex City and Galveston. As related to these applications the service standards (in days) a as follows:

Service standards of Ryder Truck Lines, Inc., between areas involved in the instant applications

Between	Houston, Tex.	All other Texas terminals	New Orleans, La.	Baton Rouge, La.	All other Louisiana terminals	Jackson, Miss.	Meridian, Miss.	All other Mississippi terminals	Memphis, Tenn.
Charlotte, N.C------	3	4	3	3	4	3	3	3	3
All other N.C. terminals.	4	4	4	4	4	4	4	4	4
Greenville, S.C -----	3	4	3	3	3	3	3	3	3
Atlanta, Ga---------	3	4	2	2	3	2	2	3	2
All other Georgia terminals.	4	4	3	3	4	3	3	4	3
Jacksonville, Fla ---	4	4	3	4	4	3	3	4	2*/3**
Miami, Fla ---------	3	4	4	3	4	3	3	4	3*/4**
Tampa, Fla---------	3	4	4	2	4	3	3	4	3*/4**
All other Florida terminals.	4	4	4	3	4	4	4	5	3*/4**
Nashville, Tenn-----	3	4	3	3	4	3	3	4	1
Chattanooga, Tenn --	3	4	3	3	4	3	3	4	2
Knoxville, Tenn-----	4	4	3	3	4	3	3	4	2
All other Tennessee terminals.	4	4	3	4	4	4	4	4	2
Birmingham, Ala ----	3	3	2	2	3	2	2	2	-------
All other Alabama terminals.	4	4	3	3	4	2	2	3	1
Eastern terminals ---	5	5	5	5	5	5	5	5	5
Ill., Ind., Ky., Ohio, and Wis. terminals.	4	4	3	3	4	3	3	4	2

**Northbound standard

*Southbound standard

An analysis of the 7,258 shipments during the one week test period discloses on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent, on the basis of the Ryder standards. Some of the shipments involved in this study were interlined by Ryder to destination even though Ryder is authorized to serve the point directly. The time computation includes only the time from Ryder's billing date to delivery to consignee or connecting line carriers. The number of shipments moving between the areas involved in the study and the performance is as follows:

Analysis of service performance of Ryder Truck Lines, Inc., on shipments between certain areas during period of March 13 through 19, 1966

Between	Texas		Louisiana		Mississippi		Memphis	
	Number of shipments	Percent on time	Number of shipments	Percent on time	Number of shipments	Percent on time	Number of shipments	Percent on time
North Carolina	891	89.7	589	85.7	185	83.9	-------	-------
South Carolina	326	83.7	131	81.7	32	81.3	-------	-------
Georgia	649	87.5	607	85.0	99	81.8	389**	85.6**
Florida	927	87.1	76	82.9	55	81.5	757	85.7
Tennessee	251	84.5	394	88.4	93	93.9	-------	-------
Alabama	208	90.9	457	87.5	55	85.5	-------	-------
Ill., Ind., Ky., Ohio, and Wis.	-------	-------	87*	80.5*	-------	-------	-------	-------

*To and from Baton Rouge and New Orleans, La., only.

**To and from Atlanta, Ga., only.

Although Ryder experienced some pickup difficulties and delays in the fall of 1965 after the merger of the Hoover Motor Express Company and the consolidation of terminal facilities of Hoover and Ryder at Atlanta, those problems appear to have been solved. A record of requests for pickup service during two weeks in March and one week in April 1967 indicates a total of 5,820 pickups scheduled, of which 5,736 or 98.6 percent were made.

Ryder believes that diversion of a substantial portion of its freight which may result from a grant of these applications will cause a decrease in its number of direct schedules between important service centers, will result in deterioration of its service to the public, and will adversely affect its financial status.

BRASWELL MOTOR FREIGHT LINES, INC. (BRASWELL) - DALLAS, TEX

Protest: - All applications.

Operations: - Braswell is a motor common carrier of general commodities authorized to operate over regular routes extending from Los Angeles on the west by way of Phoenix, Tucson, El Paso to Houston, Tex., on the south; also by way of Fort Worth-Dallas and Shreveport to Memphis, Tenn., Jackson, Miss., and Baton Rouge and New Orleans, La., on the east; also between Houston and Oklahoma City and Tulsa by way of Dallas-Fort Worth; between New Orleans and Oklahoma City and Tulsa by way of Shreveport; and between New Orleans and Memphis by way of Jackson or Vicksburg. Braswell also is authorized to operate between points in Oklahoma, on the one hand, and, on the other, St. Louis, Mo., and points in Central and eastern Illinois including Chicago.[17]

Braswell has 34 terminals including 15 in Texas, 7 in Louisiana, 4 in Oklahoma, 3 in each Mississippi and Arizona, and 1 each in California and Tennessee. It operates 177 line-haul tractors, 316 line-haul trailers, 64 pickup tractors, 53 pickup trailers, and 152 straight trucks. Its operating revenue for 1966 was approximately $11.5 million. About 40 percent of its tonnage is interline freight.

Interest: - During the year 1966 (prior to instituting any service under its certificate authorizing an extension of operation between Jackson and Atlanta and Birmingham) approximately 25.7 percent of the tonnage transported by Braswell producing about 16 percent of its total operating revenue would have been subject to diversion if these applications had been granted. This tonnage is comprised of freight moving between the following points:

[17] At the time of the hearing in these proceedings the Commission had granted Braswell authority for the extension of its regular routes from Jackson, Miss., by way of Birmingham, Ala., to Atlanta, Ga., with service also at Gadsden, Ala., and Rome, Ga.; and from Jackson by way of Meridian, Miss., Montgomery, Ala., and Columbus, Ga., to Atlanta serving intermediate points. However, service had not been initiated under that grant of authority pending termination of a certain civil litigation pertaining to the Commission decision. That litigation has been ended upholding the Commission's grant of the authority. Under the new certificate, Braswell proposes to serve some additional 141 points in Mississippi, Alabama, and Georgia and establish a number of terminals in that area. Additionally, Braswell was granted authority in *Braswell Motor Freight Lines, Inc., Extension*, 112 M.C.C. 558 (1970), to transport general commodities, with the usual exceptions over regular routes between Houston, Tex., and New Orleans, La. The certificate authorizing such operations, in No. MC-111383 (Sub-No. 17), was issued July 16, 1971.

Braswell freight subject to diversion - 1966 system totals

Tonnage: 477,298,858 pounds
Revenue: $11,542,495.81

Terminal	Tonnage	Revenue
	Pounds	
Fort Worth to:		
New Orleans	9,071,597	$136,485.48
Jackson	2,551,656	46,210.05
Memphis	1,156,867	24,967.53
Dallas to:		
New Orleans	11,404,109	226,242.49
Jackson	6,837,214	139,949.72
Memphis	2,979,516	62,403.12
Houston to:		
Jackson	1,506,826	25,315.36
Memphis	1,113,260	19,998.49
Shreveport to:		
Jackson	1,325,919	19,320.87
Memphis	1,049,486	18,441.87
Monroe to:		
Jackson	280,770	3,107.13
Memphis	2,921,903	22,576.00
Jackson to:		
Fort Worth	1,299,588	23,349.29
Dallas	7,218,988	127,343.56
Houston	1,413,704	27,978.65
Shreveport	1,050,695	18,180.84
Monroe	537,457	7,266.98
Memphis	1,888,375	27,506.00
Memphis to:		
Fort Worth	1,124,875	20,564.55
Dallas	6,636,569	108,827.88
Houston	2,778,958	48,621.24
Shreveport	4,194,428	57,948.91
Monroe	4,598,888	69,852.61
Baton Rouge	3,623,224	56,665.88
New Orleans	11,445,006	155,256.47
Jackson	4,759,652	60,189.69
Baton Rouge to:		
Memphis	5,414,593	38,341.94
New Orleans to:		
Memphis	8,554,574	105,959.76
Fort Worth	2,579,605	35,744.93
Dallas	12,170,480	147,882.14

Braswell's protest of the applications is based not only upon this freight diversio but also upon the diversion which may result from the proposed services which will competitive with its extended operations to Mississippi, Alabama, and Georgia poin It urges that its services have been satisfactory to the public as evidenced by the la of complaints against it. Braswell's schedules offered to the public for examp include first day service between Jackson, Miss., on the one hand, and, on the oth Baton Rouge, New Orleans, Dallas, and Shreveport, and second day service betwe Jackson and Houston, Oklahoma City or Tulsa; also first day service is offered b tween Memphis and New Orleans, and second day service between Memphis, on t one hand, and, on the other, Dallas, Oklahoma City, and Tulsa.

APPENDIX H

Description of regular routes authorized

PART I

In No. MC-2229 (Sub-No. 123):

(1) Between Atlanta, Ga., and Texarkana, Ark.: From Atlanta over U.S. Highway 7 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S Highway 82, thenc over U.S. Highway 82 to Texarkana, and return over the same route, serving th intermediate points of Birmingham, Ala., Greenville, Miss., and those on U.S Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.: From Jackson over U.S. Highway 8 to junction U.S. Highway 29, thence over U.S. Highway 29 to Atlanta, and return ove the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala.: From Meridian over U.S Highway 11 to Tuscaloosa, and return over the same route, serving no intermediat points, and serving the termini for the purposes of joinder only, as an alternate rout for operating convenience only.

PART II

In No. MC-94201 (Sub-No. 56):

(1) Between Mobile, Ala., and Houston, Tex.: From Mobile over U.S. Highway 90 t New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highwa 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstat Highway 10) to Houston, and return over the same route, serving the intermediat points of Pascagoula, Miss.; New Orleans, Baton Rouge, and Lake Charles, La.; and Orange and Beaumont, Tex., and the off-route points of Grand Isle, Lockport, and Golden Meadow, La., and Port Arthur, Baytown, and Texas City, Tex.

(2) Between Tuscaloosa, Ala., and New Orleans, La.: From Tuscaloosa over U.S Highway 11 (also over Interstate Highway 59) to New Orleans, and return over the same route, serving the intermediate points of Meridian, Laurel, and Hattiesburg Miss., and serving the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purposes of joinder only.

(3) Between Poplarville, Miss., and Baton Rouge, La.: From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La.

thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, serving Poplarville for the purposes of joinder only, as an alternate route for operating convenience only.

(4) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59: from Montgomery over U.S. Highway 80 to junction U.S. Highway 11 and Interstate Highway 59, and return over the same route, serving all intermediate points in Alabama.

(5) Between Meridian, Miss., and Fort Worth, Tex.: From Meridian over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth, and return over the same route, serving the intermediate points of Jackson and Vicksburg, Miss., Monroe, Ruston, and Shreveport, La., and Marshall, Gladewater, Longview, and Dallas, Tex.

(6) Between Tuscaloosa, Ala., and Fort Worth, Tex.: From Tuscaloosa over U.S. Highway 82 to Texarkana, Tex.-Texarkana, Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth, and return over the same route, serving the intermediate points of Columbus, Greenwoood, and Greenville, Miss., El Dorado and Crosset, Ark., Texarkana, Tex-Texarkana, Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark.

(7) Between Memphis, Tenn., and Topeka, Kans.: From Memphis over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo., thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka, and return over the same route, serving the intermediate points of Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo. and Kansas City, Mo.-Kansas City, Kans.

(8) Between Memphis, Tenn., and Little Rock, Ark.: From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving no intermediate points.

(9) Between West Memphis, Ark., and Little Rock, Ark.: From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., and return over the same route, serving no intermediate points.

(10) Between Little Rock, Ark., and Greenville, Miss.: From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.: From Houston over U.S. Highway 75 (also over Interstate Highway 45) to Dallas, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.: From Little Rock over Interstate Highway 30 (also over U.S. Highway 67) to Texarkana, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

PART III

In No. MC-106401 (Sub-No. 18):

(1) Between Atlanta, Ga., and Fort Worth, Tex.: From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same

route, serving the intermediate points of Jackson, Miss., Monroe and Shreveport, La., and Dallas, Tex.

(2) Between New Orleans, La., and Houston, Tex.: From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route, serving the intermediate points of Baton Rouge, La., and Orange, Beaumont, and the off-route point of Texas City, Tex.

(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala.: From Montgomery over U.S. Highway 80 to junction U.S. Highway 11, and return over the same route, serving no intermediate points, and serving the said junction for the purpose of joinder only, as an alternate route for operating convenience only.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 30th day of December 1971.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY
EXTENSION—ATLANTA, GA.

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION—
ATLANTA, GA.

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION—
ATLANTA, GA.

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION—DALLAS, TEX.

(Reentitled)

DEATON, INC., EXTENSION—DALLAS, TEX.

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC.,
EXTENSION—DALLAS, TEX.

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC.,
EXTENSION—ATLANTA, GA.

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION—
DALLAS, TEX.

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION—
DALLAS, TEX.

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION—
DALLAS, TEX.

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION—
ATLANTA, GA.

Investigation of the matters and things involved in these proceedings has been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That the petition of interveners in support of the application in No. MC-106401 (Sub-No. 18), to file a supplement to their exceptions, embracing tendered supplement, and the petition of applicant in No. MC-94201 (Sub-No. 56), to supplement its exceptions, embracing tendered supplement, corrected by letter dated September 16, 1971, be, and they are hereby, denied, for the reason set forth in the said report.

It is further ordered, That the applications in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67) be, and they are hereby, denied.

It is further ordered, That the applications in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), except to the extent granted in said report, be, and they are hereby, denied.

And it is further ordered, That unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service hereof, or within such

additional time as may be authorized by the Commission, such grants of authority made in said report shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, division 1.

ROBERT L. OSWALD,
Secretary.

(SEAL)

APPENDIX C

Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served September 6, 1972, overruling petitions for further hearing and reconsideration.

SERVICE DATE
SEPTEMBER 6, 1972

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, Acting as an Appellate Division, held at its office in Washington, D.C., on the 1stday of September , 1972.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION - ATLANTA, GA.
(Houston, Tex.)

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION - ATLANTA, GA.
(Winston-Salem, N.C.)

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION - ATLANTA, GA.
(Dallas, Tex.)

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

(Reentitled)

DEATON, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION - DALLAS, TEX.
(Sycamore, Ala.)

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, GA.
(Dallas, Tex.)

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX.
(East Gadsden, Ala.)

No. MC-1124 (Sub-No. 206)

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX.
(Charlotte, N.C.)

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA.
(Springdale, Ark.)

Upon consideration of the record in the above-entitled proceedings, and of:

(1) Protest-representation and request for oral hearing of Colonial Refrigerated Transportation, Inc., in No. MC-94201 (Sub-No. 56), filed March 17, 1972, pursuant to publication of grant of authority in the February 24, 1972, issue of the Federal Register, treated as a petition for leave to intervene embracing request for further hearing;

(2) Petition of Colonial Fast Freight Lines, Inc., in No. MC-94201 (Sub-No. 56), filed March 20, 1972, pursuant to publication noted in (1) above, for leave to intervene;

(3) Petition of Bell Transfer Company, Inc., in No. MC-94201 (Sub-No. 56), filed March 22, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(4) Petition of Southern Forwarding Company, in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(5) Petition of Atlas Transit, Inc., in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(6) Petition of Arkansas-Best Freight System, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at further hearing;

(7) Petition of Dean Truck Line, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(8) Motion of applicant in No. MC-94201 (Sub-No. 56), filed April 4, 1972, to strike, and, in the alternative to dismiss and reply to the protest-representation in (1) and the petitions in (2), (3), (4), (5), (6), and (7) above;

(9) Petition of Ryder Truck Lines, Inc., protestant, filed May 18, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(10) Petition of applicant in No. MC-111231 (Sub-No. 67), filed May 18, 1972, for reconsideration;

(11) Joint petition of Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., protestants, filed May 19, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(12) Petition of applicant in No. MC-1124 (Sub-No. 206), filed May 22, 1972, for reconsideration and, alternatively, for reopening for further hearing;

(13) Joint petition of Holloway Motor Express, Inc., Consolidated Freightways Corporation of Delaware, Yellow Freight System, Inc., Transcon Lines, and T.I.M.E.-DC, Inc., protestants, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(14) Petition of applicant in No. MC-11207 (Sub-No. 233), filed May 22, 1972, for reconsideration;

(15) Petition of Jack Cole-Dixie Highway Company, protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(16) Joint petition of Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, and Gordons Transports, Inc., protestants, filed May 22, 1972, corrected and supplemented May 30, 1972, for reconsideration in Nos.

MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(17) Petition of Roadway Express, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(18) Petition of Braswell Motor Freight Lines, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(19) Petition of applicant in No. MC-76177 (Sub-No. 304), filed May 22, 1972, for reconsideration;

(20) Petition of Red Line Transfer & Storage Company, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), and MC-94201 (Sub-No. 56);

(21) Petition of applicant in No. MC-59680 (Sub-No. 147), filed May 22, 1972, for reconsideration;

(22) Late-tendered joint petition of Alamo, Express, Inc., Central Freight Lines, Inc., Eagle Motor Lines, Inc., and Red Arrow Freight Lines, Inc., protestants, filed May 23, 1972, for reconsideration in No. MC-94201 (Sub-No. 56);

(23) Joint reply by 41 shippers, interveners in support in No. MC-106401 (Sub-No. 18), filed June 12, 1972, to the petitions for reconsideration in No. MC-106401 (Sub-No. 18);

(24) Joint reply by Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, Gordons Transports, Inc., and Red Line Transfer & Storage Company, Inc., protestants, filed July 12, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(25) Reply by applicant in No. MC-2229 (Sub-No. 132), filed August 14, 1972, to the petitions for reconsideration of the grant in No. MC-2229 (Sub-No. 132);

(26) Reply by applicant in No. MC-94201 (Sub-No. 56), filed August 14, 1972, to the petitions for reconsideration in (9) through (21) above;

(27) Joint reply by Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(28) Joint reply by Transcon Lines and T.I.M.E.-DC, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(29) Joint reply by Roadway Express, Inc., and Roadway Express, Inc., of Mississippi, protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(30) Reply by Braswell Motor Freight Lines, Inc., protestant, filed August 16, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(31) Reply by applicant in No. MC-106401 (Sub-NO. 18), filed August 16, 1972, to the petitions for reconsideration of the grant in No. MC-106401 (Sub-No. 18); and

(32) Joint petition of Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Deaton, Inc., Gordon Transports, Inc., and Red Line Transfer & Storage Co. Inc., protestants, filed August 18, 1972, for extraordinary relief under Rule 102 of the Commission's General Rules of Practice, embracing a request for review by the entire Commission;

and good cause appearing therefor:

It is ordered, That the late-tendered joint petition in (32) above be, and it is hereby, accepted for filing.

It is further ordered, That the petition in (32) above be, and it is hereby, rejected for the reason that the proceeding in its present posture is not the proper subject of a plea for relief directed to the entire Commission.

It is further ordered, That the petitions in (1), (2), (4), (5), (6), and (7) above, collectively seeking leave to in vene, and requesting further hearing and reconsideration be, they are hereby, denied and rejected, respectively, for the r sons (1) that the publication of the grant of authority in No MC-94201 (Sub-No. 56) was made for the purpose of apprising t interested persons of the additional authorization to use Mon Ala. as a gateway and to serve a specified point in Alabama f purposes of joinder only, which was not included in the notic of authority sought as originally published in the Federal Re ter issue of August 19, 1965; (2) that the petitioners' state interests in No. MC-94201 (Sub-No. 56) are generally based e (a) on authority in conflict with the services proposed as s forth in the publication as originally made, and petitioners ample notice and opportunity but failed to file timely protes at the time in the proceeding in which they now assert an int est or, as in the case of petitioner in (6) above, filed a t protest and later withdrew said protest, (b) on authority acq by them after the original publication, which authority does conflict with the additional authorization necessitating repu lication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, has not been shown to be prejudiced by the involved portion the grant requiring republication, or (c) on authority acqui by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) the extent it authorized service at Montgomery, Ala. and a specified point in Alabama for purpose of joinder only; and that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to authority acquired by certain of the petitioners subsequent the original publication, there is no showing that such evid would warrant a result different than that reached in the re and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purposes of joinder only.

It is further ordered, That in view of the action taken the next preceding paragraph, the motion in (8) above be, and is hereby, overruled.

It is further ordered, That the proceeding in No. MC-11 (Sub-No. 67), be, and it is hereby, reopened for reconsidera on the present record.

It is further ordered, That the petitions in (9) and (11) through (22) above, be, and they are hereby, denied, for the reasons that the findings of Division 1, in its report and order of December 30, 1971, reported at 114 M.C.C. 571, in Nos. MC-1124 (Sub-No. 206), MC-2229 (Sub-No. 132), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. [illegible]), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), are in accordance with the evidence and the applicable law and that no sufficient or proper cause appears for reopening the proceeding for reconsideration or further hearing.

It is further ordered, That, unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56) and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grants of authority made in the report and order entered herein on December 30, 1971, shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

JOSEPH M. HARRINGTON,
Acting Secretary.

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

APPENDIX D

Transcript of hearing before Hon. John E. Miller, United States District Judge, on November 1, 1972.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC.: ET AL	:	
VS.	:	FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION and JOHNSON MOTOR LINES, INC.; ET AL	:	

Before:

HONORABLE JOHN E. MILLER

Senior District Judge

Fort Smith, Arkansas.
November 1, 1972.
9:30 a.m.

APPEARANCES:

REPRESENTING THE PLAINTIFFS:

Thomas Harper, Esq.
Don A. Smith, Esq.
Harper, Young & Smith
Postoffice Box 43
Fort Smith, Arkansas. 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee. 38138

APPEARANCES, CON'T.:

REPRESENTING THE PLAINTIFFS: (Con't.)

Phineas Stevens, Esq.
Butler, Snow, O'Mara, Stevens & Cannada
Post Office Box 22567
Jackson, Mississippi. 39205

Drew L. Carraway, Esq.
Rice, Carpenter & Carraway
1111 E Street, N.W., Suite 618
Washington, D.C. 20004

REPRESENTING THE DEFENDANTS, UNITED STATES and ICC

Bethel B. Larey, Esq.
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas. 72901
By Robert Johnson
Assistant United States Attorney

REPRESENTING THE DEFENDANT CARRIERS:

Robert L. Jones, Jr.
Jones, Gilbreath & Jones
Merchants Nat'l. Bank Building
Fort Smith, Arkansas. 72901

Courts Oulahan, Esq.
400 Hill Building
839 - 17th Street, N.W.
Washington, D.C. 20006

Maurice F. Bishop, Esq.
Bishop & Carlton
325-329 Frank Nelson Building
Birmington, Alabama. 35203

Jerry C. Prestridge, Esq.
Clark, Thomas, Harris, Denius & Winters
12th Floor Capital National Bank Building
Austin, Texas. 78767

C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing on Temporary Restraining Order before Honorable John E. Miller at 9:30 o'clock a.m. on the 1st day of November, 1972, at Fort Smith, Arkansas; that the attorneys present and participating are as heretofore set out; that during said Hearing the following evidence was introduced and proceedings were had in connection therewith, towit:

P R O C E E D I N G S

9:30 a.m. o'clock. November 1, 1972.

Before the Court.

MARSHAL. Everyone will rise. (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

THE COURT. Now, gentlemen, this is the day that was specifically set for on the application of plaintiff for a temporary restraining order. Since that time in the interest of time, in the interim time there has been some others matters developed and the Court has before it now the matters, other matters that has not been determined. That is the application for or the Motion of certain interventions. Let me get my papers straightened out here.

THE CLERK. I have several other exhibits here just as soon as I can get a file mark on them.

THE COURT. What are they?

THE CLERK. Affidavits and ---

THE COURT. That is all right. I feel like some understanding should be reached about

the Motion of the Lorch Westway Corporation and other shippers to intervene here. I have given that some consideration, some myself but I do not believe that I have any briefs except -- I don't believe I have any briefs on that question at all. Mr. Harper, you did not file any, did you?

MR. SMITH. Yes, Your Honor, we filed a brief in opposition to the Motion to Intervene on behalf of all of the plaintiffs. That was filed on Monday.

MR. JONES. If it please the Court I filed a brief this morning on behalf of the shippers.

THE COURT. I know you did. I believe I have it in here.

MR. HARPER. If the Court please, may I present the out-of-town counsel for the plaintiffs?

THE COURT. Yes, sir.

MR. HARPER. This is Mr. Phineas Stevens of the Mississippi bar. Mr. Robert E. Joyner of the Memphis, Tennessee, bar.

THE COURT. I have met those gentlemen and the proper order will be entered to allow them to represent their clients in this case.

MR. JONES. On behalf of the defendants I would like to present out-of-town counsel for the defendants. Mr. Donald E. Cross, representing Johnson Motor Lines; Mr. Jerry C. Prestridge, representing, Austin, Texas, representing Red-Ball Motor Freight; Mr. Courts Oulahan of Washington, D.C., representing the shippers; and Mr. Maurice F. Bishop, Birmingham, Alabama, representing Bowman Transportation.

THE COURT. The proper order will be entered and we are glad to have you, the proper orders for your representation in this case. Now, going to this question of the application of Lorch Westway Corporation, as I say now I have Mr. Jones brief that was submitted this morning in opposition; yesterday the plaintiff presented a brief of October 31st in opposition to intervention, and also filed certain exhibits and this morning Mr. Jones submitted a brief in support of the petition. Now, I have not had time, gentlemen, just to be prefectly frank with you I have not had time to consider that question that I think ought to be considered. I am, I think, entirely familiar with the applicable statutes. There are some other

things in this case that I think ought to beconsidered. There are several decisions that I have not read that are applicable and most of them apparently in favor of admitting them under that provision of the statute showing an interest in the outcome of the proceeding and that may be true, but I have got to take a day or two to dispose of that Motion but at the same time since you are all here if anyone desires to make any statement or any argument on the matter I would be glad to hear it because it would help me in disposing of it within the next day or two and then we will take up the question of whether or not a temporary restraining order should be entered. Is that satisfactory to you all, now?

MR. JONES. Yes, Your Honor.

THE COURT. We might have to try it piecemeal but this case somebody ought to cut it up in to pieces several years ago.

MR. JONES. May it please the Court, Mr. Oulahan, representing the shippers, would like to make a brief argument.

THE COURT. I can hear him right now.

MR. OULAHAN. May it please the Court, Your Honor, we are asking intervention rights here under 28 U.S.C. Section 2323 and Rule 24 A 1 of the Federal Rules of Civil Procedure. We are not asking permissive intervention nor are we asking intervention under Rule 23 as a Class Action. We are not here as a Class, we are here because we are a party before the Commission and I might say, Your Honor, that the case cited by our opponents in the brief filed with you, which is Sprock against the United States, holds that we have a right to be here. I am sure it was a mistake but if Your Honor will take a look at the page before the quotation in their brief you will find that Justice Brandies said that the shippers in that case had to right to intervene in the Commission proceeding and by that intervention being granted to them they had a right to intervene in the District Court proceeding. What Justice Brandies in the portion quoted by my colleagues was saying was that the shippers had no independant right to go to the Supreme Court where the applicants, that is, the carriers involved were not going up to

to the Supreme Court, and that is all that holding holds, Your Honor.

THE COURT. I glanced at that case yesterday but I will look at it more thoroughly.

MR. DUGAHAN CONTINUES: Now, the important point, Your Honor, is that the third paragraph of Section 2323 of Title 28 under which we are coming in does say corporations interested in the controversy or the question before the ICC, or in any action commenced under the aforesaid, as we have here, may intervene. As Your Honor has seen from our memorandum in the Brotherhood of Railroad Trainmen in 1947 the Supreme Court the Chief Justice held that the statute involving intervention means that not that the District Court has discretion but if the intervenor wants to come in and he is a party in the ICC proceeding, he has a right to intervene, and, Your Honor, that was squarely held in Salem Transportation Company which we cited to you in 1967 before the Southern District of New York. In Salem, Your Honor, the District Court went ahead and using Brotherhood said the ---

THE COURT. You are talking now about the case you cited in your brief?

MR. OULAHAN. Yes, sir. The important case we would like Your Honor to really look at is United Transport against United States which was a case just across the border in the Western District of Oklahoma in 1962. That case holds that a shipper who intervened after the hearing before the ICC, after the report by the Hearing Examiner, has a right to be a party in the District Court of review action and that is exactly our position. This is the point which the protestants are using that we did not participate in the hearings, that we are somewhat a Johnny-come-lately, while United Transport is an answer to that because an intervention was allowed of right by the District Court in Oklahoma to shippers who were in exactly the same position as we were. And we have also cited Your Honor Frozen Foods Express which is a recent decision in the Western District of Texas on intervention of right by Judge Seple and other authorities. Now, Your Honor, we ought to be here because we are the principal reason why the Commission found in favor of the three defendants, the carriers. As Your Honor has read in the Commission decision it

was lack of service to us that was responsible for the reversal by the Commission of what the Hearing Examiners had held and that is the prindipal issue we have here, the plaintiff has in three places in its complaint cited us out intervention and our interest as being some kind of undue prejudice by the Commission. Well, Your Honor, we ought to have a right to be here to protect ourselves and we believe we can make a contribution to the Court. Now, Your Honor, the forty-one shippers we are talking about are from all over the United States. They come from the New England area, the Mid-Atlantic area, the Carolinas and the Southwest that represent a broad range of products, everything from Olincraft Industries which makes paper products and ships via Johnson the ingredients that go in to the paper products to the Ethyl Corporation which ships chemicals; we are a representive cross-section, Your Honor, of the traffic that was involved in the Commission proceedings and we believe that we can represent to this Court in this proceeding not only in the TRO but in the trial on the merits and we can make a contribution to persuade

the Court that the TRO should not be granted and it is a matter of right and the substantial evidence of record, the Commissions' actions ought to be affirmed. Now, we are not in here to create delay. We will coordinate our efforts as we did before the Commission with Johnson's counsel, if necessary we can submit or join in briefs together. Johnson cannot represent us, we have an interest that is different from Johnson's. That interest however is allied with Johnson because we believe Johnson can give us the kind of service we want. And, Your Horor, if the TRO is entered we are just going to be sitting here not getting that service. Among the affidavits that you have is one from Mr. Sloan who is the Traffic Manager for Johnson who states under oath that he is still getting complaints from the shippers. It is not a situation that has changed a bit and we believe that we would be injured by any kind of delay that would put in to effect the certificate granted to Johnson by the Commission. Thank you, sir.

THE COURT. All right, Mr. Oulahan, as stated now I would be glad to hear anybody

else on the question of intervention; then I want to take up this question of Temporary Restraining Order. Mr. Oulahan has covered his and has had something to say about that which is perfectly all right because I want to carry these things along and I imagine, Mr. Harper, since you -- or Mr. Smith -- since you are the one that is asking for the entry of Temporary Restraining Order I expect I had better listen to you first.

MR. HARPER. I will leave that to Mr. Smith. As Your Honor knows I have just recently have been out of the office --

THE COURT. I do know that you have not been in your office -

MR. HARPER. And I am not too familiar with this particular case.

THE COURT. You are not entirely by yourself on that but I will be glad to hear from you. Let me ask you just a question before we go in to that. Now, Bowman Transportation and Johnson and Red Ball are in Court in opposition to that as well as -- I am treating your clients as

being ---

MR. OULAHAN. Thank you.

THE COURT. I am treating your clients, I am considering your clients right along with one of those protesting, they are among those, in opposition to the Temporary Restraining Order. Now, who else is here on that particular question?

MR. JOHNSON. We are representing the ICC, Your Honor.

THE COURT. I think I have the rest of these spotted all right. You know that rather insenable order I entered there about when this case was filed - that was because of the lack of communication. I was getting ready to have a Hearing on that matter and Mr. Johnson had got some garbled news and so did I and I could not understand it so I just entered that order so that no body else would understand it, I wanted to be as mystic about it as everybody else. Now, Mr. Smith.

MR. SMITH. Very well, Your Honor --

THE COURT. What did you say you had there you had there this morning?

THE CLERK. Sir?

THE COURT. What did you say you had there this morning?

THE CLERK. The plaintiffs filed affidavits this morning. -

THE COURT. I know that.

THE CLERK. Then this morning before we came in to Court Mr. Jones filed a brief, memorandum brief of intervening defendant, Bowman Transportation, and also an affidavit --

THE COURT. Does anybody represent Red Ball?

MR. PRESTRIDGE. Yes, sir.

THE COURT. Have you filed any affidavit or any brief in opposition to that?

MR. PRESTRIDGE. Yes, sir. I filed affidavits yesterday morning.

THE COURT. Well, I have not gotten them yet.

MR. PRESTRIDGE. I filed them with the Clerk. I say yesterday morning, I think it was yesterday afternoon.

THE COURT. That was proper.

MR. PRESTRIDGE. And served Mr. Smith.

MR. SMITH. If the Court please ---

MR. JONES. Before we begin what was that that you were referring to that you just filed?

MR. SMITH. In the course of stating the Arkansas Best authority, an affidavit, one was mis-stapled, it was someone elses' affidavit and I substituted the correct one, the Arkansas-Best affidavits by Gary Bronson attesting to their authorities and I think you have the correct copies now.

MR. JONES. Thank you.

MR. SMITH. If the Court please I think in an orderly course I would move the introduction of the affidavit that we have filed with the Clerk in support of our Motion for the Temporary Restraining Order.

THE COURT. All right.

MR. SMITH. Those will be the affidavits of Gary D. Bronson on behalf of Arkansas-Best Freight System, Inc.; John M. Records on behalf of Yellow Freight Sustem, Inc.; James W. Connor on behalf of Roadway Express, Inc, and Roadway Express, Inc., of Mississippi; Frank G. Campbell on behalf of Campbell 66 Express, Inc.; William P. Goodwin on behalf of Gordon Transports, Inc.; H.M. Kirk on behalf of ET & WNC Transportation

Company; J. Montague Williams on behalf of Mercury Mortors, Inc.; L.D. Davis on behalf of Red Line Transfer and Storage Company, Inc.; and Clarence Levi on bahalf of Mercury Freight Lines, Inc.; all plaintiffs in this proceeding. I think it proper at this time, Your Honor, to give a brief summary of the events that have transpired and cultimating in this particular hearing here today. The actions which were commenced before the Interstate Commerce Commission were commenced back in 1965. Extensive hearings were held before what are now referred to as Administrative Law Judges and then Hearing Examiners and we have attached to our complaint a copy of their Report and Order --

THE COURT. Who were the original plaintiffs when this case was instituted back in 1965; do you recall?

MR. SMITH. The applicants in this proceeding --

THE COURT. The applicants is what I meant to say.

MR. SMITH. There were ten of them.

THE COURT. Then that is all right.

MR. SMITH. They included Roadway Express,

Inc., Red Ball Motor Freight, Inc., Deton Truck Line, then it was re-entitled Deten, Inc., Floyd and Beasley Transfer Company ---

THE COURT. I have got them now.

MR. SMITH. They are all listed on the first page of the Examiners Report.

THE COURT. Yes.

MR. SMITH. Subsequently this matter after several pleadings were filed a decision was handed down by Division One and served January 24, 1972, reversing in part the recommended order of the Hearing Examiners ; they had recommended the denial of all of the applications and the Commissions Division One would issue Certificates of Authority to Johnson, Bowman and Red-Ball, intevenors in this proceeding. Subsequently pleadings were filed and Division One acting as an Appellate Division on September 1, 1972, entered an Order, the effect of which as far as this proceeding is concerned would issue those Certificates. That was served on September 6, 1972. Thereafter certain of the now plaintiffs in this proceeding filed with the Commission as allowed by law their application to declare this matter of transportation im-

portance and to gain consideration by the full Commession.

THE COURT. What is that you stated now?

MR. SMITH. Some of the plaintiffs after the issuance of the September 6th Order filed their Petition for a Determination and Announcement that the proceedings involved and the issue of general transportation importance - we mentioned this in our complaint because it was pending at that time ---

THE COURT. What was the purpose of that?

MR. SMITH. This is allowed by the Statute and the Rules of the Commission and the Commission at that time, the whole Commission can treat this matter as general transportation importance and review the entire proceedings or those segments that it desires to review.

THE COURT. All right.

MR. SMITH. The Commission by Order dated October 2, 1972, and served October 6, 1972, denied those Petitions and therefore did not consider it the matter of general transportation importance. Now, after the September 6th Order was entered by the Commission contact was made by a representive of the plaintiffs,

Mr. William O. Turney, an attorney in Washington, D.C. He regularly represents Roadway Express, Inc., and Roadway Express, Inc., of Mississippi. The office of the general counsel of the Interstate Commerce Commission was sent a letter advising the Commission that litigation would be instituted in opposition to the issuance of the Certificates to Bowman and Johnson and Red Ball. On the 13th day of September Betty Jo Cristian, an associate general counsel of the Interstate Commerce Commission, sent Mr. Turney a letter and she requested that - well, she advised that the ICC would withhold the issuance of those Certificates until October 6th pending the filing af the contemplated law suit by these plaintiffs, and as you know and as the file reflects on October 4, 1972, within the time limit the complaint was filed in which we requested that a stay of the issuance of those Orders be granted. Prior to the filing of that complaint we had advised Mrs. Christain that we were going to file it in this Court and we told her that we would file it during the week of October 2nd. At that point in time our representive stated that she was going to allow

the representives of Bowman, Johnson and Red-Ball this information and notified them that the suit was going to be filed. We filed the suit and as the Court has referred to in the preliminary statement the United States Attorneys' Office for the Western District of Arkansas appeared pursuant to a notification that the suit had been filed and advised this Court that it would not be necessary to issue a Temporary Restraining Order and that the Commission would voluntarily withhold the issuance of those Certificates. In the meantime Mr. Donald Cross representing Johnson Motors had wired the Court and the Clerk asking that he be notified at such time when the temporary restraining order hearing would be heard. Now, on October 18, 1972, the Commission sent a notice to all parties of record in these proceedings that the Court action had been instituted. Thereafter at the request of Mr. Cross and through discussion with the Interstate Commerce Commission this Court entered the Order asking that this matter be heard today. Now, on behalf of all the plaintiffs we appear in support of this Court issueing the Temporary Restraining Order. We have filed

with the Court the affidavits of various representives of the plaintiffs and collectively these plaintiffs are in opposition to all of the issuence of the certificates of all these carriers, Johnson, Bowman and Red Ball. We have also been favored with affidavits from Johnson Motor Lines, Red Ball, and this morning we received an affidavit from Bowman. No one has contested the jurisdiction in so far as the issuance of the Temporary Restraining Order and I do not think the record need be burdened by a discussion of the jurisdiction. We submit to the Court that the consideration to be given here is whether or not irreparable damage will occur to the plaintiffs if the certificates are issued by the Interstate Commerce Commission while this case is pending before this Court and a final determination on the merits has not been made. There are provisions within the Statutes and the Court certainly is aware of these Statutes which allows this Court at this time to enter a Temporary Restraining Order upon the showing of irreparable damage. I think the Court since you have not had an opportunity to read the affidavits can read the affidavits

and you will find essentially these factors disclosed in these verified statements; first, that tese carriers that are plaintiffs who are asking for the Temporary Restraining Order are presently carriers that are serving the public throughout the entire territory that could be served by Bowman, Johnson and Red Ball if these certificates were issued. As such the public is not being denied service because service already exists for those people as a result of the service performed by these parties, these plaintiffs and others. Secondly, you will find that these are carriers that their entire livelihood is based upon offering service to the public. They have purchased equipment, erected terminals, hired employees, made their own investigations concering highway conditions and the best and most feasible routes to follows and they are performing the service for the public in the area encompassed by these proposed Grants of Authority. These affidavits also reveal to the Court in varying amounts of statistics that if this Temporary Restraining Order is not granted serious diversion of traffic will occur to the plaintiffs and other carriers. Now, the

effect of the diversion of traffic does not simply go to a lessening of income because it also would result in a curtailment of employment, lack of purchase of future equipment, expansion of terminal facilities and the possibility of reducing schedules so that the lack of income could be made up of the curtailment of services to the public. So rather than this service being hurt by the grant of the Temporary Restraining Order it actually will be helped and encouraged if the Court were to grant the Temporary Restraining Order. I noticed in the affidavits submitted by Red Ball and also by Johnson that this matter is actually covered in those affidavits. Both Red Ball and Johnson state to the Court that they now are performing a two-line service from all of the areas involved in these applications but if the Temporary Restraining Order is not entered and the certificates are permitted to be issued they will then introduce a single line service. Johnson, who interlines with the plaintiffs and other carriers, contemplates gross operating revenues for a six-month period of almost one million dollars. Now, where is that revenue

going to come from? It is going to come from the pockets of the plaintiffs and the other carriers who are now presently rendering this service to the public from that area. The affidavit of Red Ball states that they are presently interlining with T.I.M.E.-D.C., Inc.; Johnson with Bowman with Gordon with Central and I am naming all of the parties to this litigation, but if this certificate is allowed to be issued then they are not going to interline with these carriers any more. In other words the effect of the granting of the Temporary Restraining Order is a preservation of the status quo or the current conditions under which these carriers are now operating. It affords no detriment to these three carriers. It affords an opportunity for this service to be rendered to the public as it is now being rendered and it also gives everyone an opportunity to consider this case on its merits. One other consideration that the Courts have given in proceedings of this nature is the possibility of success the ultimate decision to be reached by the Court. I do not intend to argue the merits of this case. I do not think

it is appropriate in this proceeding and I would not attempt to do so. I would only call the Courts' attention to the fact that in our complaint we have enumerated what we believe to be allegations to show that the merits are certainly in question and I think the Court can take in to consideration one basis factor, the Hearing Examiners who were there, who heard the testimony denied all of the applications; the Division reversed those Hearing Examiners on three certificates, Bowman, Johnson and Red Ball. So within the Interstate Commerce Commission there is a question as to whether or not these certificates should have been issued by the personel hearing the cases and deciding them. We feel like that we have met the necessary criteria for establishing that a Temporary Restraining Order should be entered; first, through these affidavits we have shown that there will be irreparable injury; secondly, we have pointed out and basically it has been admitted that no injury can occur to these three who would receive these certificates because they do not have that authority now. If they are allowed to institute those operations by the

denial of our request for a Temporary Restraining Order and then subsequently this matter was reversed so that they would not have the issuance of these certificates greater detriment could occur to them. We have prepared and will submit to the Court authorities which adequately deal with the issuance of a Temporary Restraining Order. We would invite the Courts attention to the case of Westinghouse Electric Corporation verus Singer Sewing Machine Company, a Seventh Circuit case, and Interstate Commerce Commission verus Hudson Transportation Company, a Southern District of New York case. Also would refer the Court to the Benson Hotel Corporation verus Woods case, an Eighth Circuit decision in 1968. We will put this in final form and submit it to the Court, but I think that the facts as presented by the evidence and as contained in the record before the Interstate Commerce Commission and alluded to in the pleadings before this Court clearly establish that at this time a Temporary Restraining Order should be granted. May I have one second, Your Honor?

THE COURT. Yes.

(Mr. Smith confers with other attorneys.)

MR. SMITH. In conclusion, Your Honor, I would advise the Court this case has been pending for seven years. There is no immediate urgency for the institution of the service as a result of the issuance of these certificates. I think possibly though arguments and/or affidavits that have been introduced before the Court the Court might have the impression this is an argument between giant motor carriers. There are some motor carriers in this proceeding that would be considered large corporations; on the other hand there are participants in this proceeding that are exceedingly small and I would all the Courts attention to Holloway Motor Lines, Red Line Transfer and Storage, ET & WNC and some of these others; and I would also refer the Court to pages 26 and 27 of the Examiners Report in which the Examiners after hearing the testimony in this proceeding makes the statement that Holloway has subject to diversion seventy-one percent of the tonnage that it handles; that Red Line would be put out of business and, interestingly enough the Division does not comment and that has not been chanllenged by these three who seek the grant of these applications.

So I think for the preservation of the national transportation policy as it exists today the Temporary Restraining Order should be issued and this matter be fully litigated before the assembled Three Judge Court. Thank you, Your Honor.

THE COURT. All right.

MR. JOHNSON. If it please the Court, I have been asked by the Interstate Commerce Commission to appear on its behalf. The United States through the Justice Department has not at this time decided what position they will take in the proceedings, so my remarks will be confined to the Interstate Commerce Commission and for the most part the Interstate Commerce Commission will defer to the intervening intervenors and as to the arguments I would ask merely to set forth what the Interstate Commerce Commission believes to be the grounds for a Temporary Restraining Order; first, have the petitioners shown that they are likely to succeed on the merits, and intertwined with that is the persumption of the validity of the regulating orders, to the presumption that the Interstate Commerce Commission is correct and its orders

must be regarded in order that if the petitioners should succeed in having a Temporary Restraining Order issued at this time. The second, will they be irreparably damaged, and, third, will it harm other parties, and, fourth, where lies the public interest. We get these where they are most simply stated from Virginia Petroleum Jobbers against Federal Power Commission, 259 Federal Second, 921 to 925. With that short elemental statement of law I am sure the Court is very familiar with I will defer to the intervenors. Thank you.

THE COURT. All right.

MR. CROSS. If the Court please, I am Donald E. Cross, representing intervening defendants Johnson Motor Lines, Inc. This matter is of such importance to each of the intervening defendants, Your Honor, that each of us would like to be heard briefly.

THE COURT. That will be very well, you may do that.

MR. CROSS. I will go first and my colleagues will follow.

THE COURT. That is very well. Go right ahead.

MR. CROSS. Johnson was the first of the applicants to file their application before the Commission, those applicants being a group of nine carriers who were seeking related but not the same service and that is something the Court must bear in mind. Each of these grants of authority authorize somewhat different points and territories to be served and it is for that reason, Your Honor, that the sixteen and now seventeen plaintiffs you will find a great deal of diversion of opinion on their part as to which of these applications are opposed. For example only eight of these plaintiffs oppose the Johnson application before the Commission --

THE COURT. I noticed that.

MR. CROSS. Actually there is nine now, Roadway has intervened here as a plaintiff only yesterday or the day before was also one of those opposing Johnsons' application. You will find the same thing true with the other applicants and now potential certificate holders coming before you. In short we do not have some eighteen plaintiffs saying that they are all going to be hurt by any one of these applications.

In other words if there is harm to them at all and I seriously dispute that, in any event I do not think the harm irreparable within the meaning of the Statute, it is diverged among this group of people in such a way as you do not get the fullcompact of nineteen plaintiffs saying they are all going to be hurt by each of these applicants. It has been attacked you will find that they proceed collectively against all three as though the same impact was from each of us. But that is not the case. I do not want to take the Court's time today to spell out all of these varying interests. I think it is sufficient for this purpose to show that the interest is not the same as to each of the applicants and certainly not the same as to the Johnson application.

THE COURT. I detected that from the little study that I have made. That is the thing that causes me more trouble, that is, contemplated trouble than any other one issue in the case is separating whose who and why and so forth and so on --

MR. CROSS. If Your Honor please, prehaps this will -- this thing that I will next cover

runs through all of them. When you read the other plaintiffs affidavits who have the burden of establishing irreparable harm the main element I think this Court must look to you will find that they complain basically of new competition which will divert traffic from them, divert shipments from them. Now, the case that which I have taken the priviledge of referring to is the Frozen Foods Express verus United States, Western District of Texas, June 28, 1972, where Judge Suple, United States District Judge, denied a Temporary Restraining Order simliar to the ones or almost identical to the ones that the plaintiffs seek here on the grounds primarily, and I quote "the Court finds that the only injury plaintiffs might suffer by a denial of a stay would be increased competition which in the Interstate Commerce Commissions opinion presumptively valid is in the public interest. Such injury of anycannot be said to be irreparable." End of quote. If the Court please ---

THE COURT. What is the name of that case?

MR. CROSS. I have a copy here for the Court. It is Frozen Foods Express, Inc.

THE COURT. I have it in my library. Is it cited in your brief?

MR. CROSS. No, that is not cited in my brief and it was for that reason that I thought that I had better give the Court copies of it.

THE COURT. That is all right.

(At this time Mr. Cross hands papers to the Court.)

MR. CROSS. If Your Honor please, the Interstate Commerce Commission is the Agency of Congress that must look to this transportation picture. In this situation it consulted the applications of ten large carriers and held a hundred and forty-nine days of hearings and is probably one of the largest cases of this type that the Commission has ever considered. It has considered it absolutely fairly. Pleadings briefed, briefs that are mammoth and with that consideration it has deemed to grant the applications of three of the ten. They did not grant all ten of the applications, there were three and the basic grounds for that grant is that the existing transportation system composed of these plaintiffs had not been rendering these adequate service to the public and that the public needed the transportation

of the three successful applicants. Now, the plaintiffs have told you that, one, they are serving the public today but they have been found by this Agency not to be serving it adequately and it is for that very reason that the Commission wants to issue the certificates in this case. No. Two, they tell you that this new competition will divert traffic from them. First I would say that based on the Frozen Foods case and others that Mr. Bishop will cite to the Court the mere possible diversion of traffic, loss of business by these plaintiffs and the increased competition they would receive from these new certificates is not a irreparable damage within the meaning of the Statute. There are two cases holding that. So that is all that they have tried to show this Court their damage would amount to. With that gone they do not need a primary element that this Court must find specifically that they would suffer irreparable damage. But just for a moment, Your Honor, assume for purposes of argument that the damage to them, the potential loss of business as they say and the new competition, assuming for purposes of argument that it is on - that

this Court should consider, the Court must also balance that harm against the harm to the intervening defendants before you here. I have submitted the affidavit of Mr. Sloan setting forth in detail the steps taken by Johnson to prepare itself to institute the service that the Commission has found to be needed. Using one figure alone there is some two hundred or two million dollars of new equipment which has been contracted to purchase; they have taken innumerable other steps preparatory to starting operations. If this Court restrains the Commissions issuance of the certificates those steps will be for naught. They are not the kind of things th Johnson can go back and recoup. They would have to be done over again in the event and we think the likely event that this Court confirms the Commission on the merits. That is I submit irreparable damage, that type of loss and waste that would incur were the Court to restrain the issuance of these certificates. Now, cousel for plaintiffs points to Johnsons' affidavit and says "well, we project revenue as a result of operations under the new certificate." If you will read Mr. Sloan's affidavit carefully,

Your Honor, you will find that not one dollar of that projected increased revenue will be diverted from any of the plaintiffs in this case. It is business that Johnson is handling today with carriers other than the ones complaining to this Court and not from these plaintiffs. That is significient. And lastly, Your Honor, Mr. Sloan's affidavit contains some assistance of these plaintiffs. Again assuming, and I go back to my original point that new competition and diversion of traffic to these plaintiffs is not irreparable harm within the meaning of the Statute. But assuming argumentatio that it may be so considered by the Court Mr. Sloan's affidavit contains financial statistics of some of the plaintiffs, namely the ones opposing Johnson, it shows for example - and we have affidavits here from Gordon Transports today, Gordon's being one of the plaintiffs opposing Johnson, Gordon's had net operating revenues in 1971 of forty-eight million dollars, had a net income of almost two million dollars, an operating ration of ninety two percent, very favorable in the motor carrier industry. Campbell, another one of the plaintiffs opposing Johnson,

had operating revenues in 1971 of twenty-four million dollars, an operating ratio of ninety-two point five (92.5), very favorable --

THE COURT. What do you mean by "operating ratio"?

MR. CROSS. That is the ratio of the carrier's total sales, revenues, to total expenses; and in the motor carrier industry as we point out in the affidavit that ratio is said to be healthy for a motor carrier at about ninety-three (93) and the two ratios for two of the plaintiffs that I read to you are less than ninety-three (93), in other words in a healthy position. I will not go into detail, all the other figures are there, except to point out that assuming argumentatio only that new competition is a factor that this Court can consider as irreparable damage these carriers are more than able financially to withstand increased competition whcih the Interstate Commerce Commission has said is needed in the public interest. I want to mention to the Court that when Mr. Sloan's affidavit was prepared Railway Express was not a plaintiff. I have worked up

the financial statistics of Roadway Express just overnight after having learned that they were in the case just to point out to the Court Roadway had net operating revenue in 1971 of two hundred ninety eight million dollars ($298,000,000.00); net income of eighteen million ($18,000,000.00), almost eighteen and a half million ($18,500,000.00); of all the plaintiffs this is obviously the strongest and assuming argumentatio new competition constitutes irreparable damage this carrier could well withstand it. That will conclude my remarks, Your Honor.

THE COURT. Thank you.

MR. CROSS. Thank you.

MR. SMITH. Mr. Drew L. Carraway of Washington arrived late and I would like to introduce him to the Court and ask that he be allowed to participate as one of the plaintiffs, as one of the attorneys for the plaintiffs.

THE COURT. I intended to remark about that but Mr. Cross had me mesmerized and I overlooked that. Glad to have you, Mr. Carraway. All right, the next one.

MR. BISHOP. I am Maurice F. Bishop and I am appearing for Bowman Transportation, Inc., resisting the application for a Motion for a Temporary Restraining Order which we will refer to for expediency as a TRO. As has previously been suggested this case actually has its beginning in July of 1965 when the series of ten applications was filed with the Commission. I think it might be well and prehaps important in consideration of whether to issue a TRO to note that the hearings in this case commenced on March 21, 1966, and it has been appropriately described by the Commission as being one of the longest and the most thoroughly considered cases in the Interstate Commerce Commission history. Suffice to say there were 933 public witnesses who appeared and testified to an impelling need for the various service proposals inherent in the application. The hearings continued almost without rest for 147 trial days. The transcript of testimony in this proceeding covers 23,446 pages -- 433, I am sorry. There were 1989 exhibits, some composed of hundreds of pages that were introduced and considered in the various administrative process and procedure that was involved in this or these

cases. Following all of that series of extended hearings the briefs, exhaustive briefs were filed to the Examiners in the case by all of the parties or on behalf of all of them. After the briefs were filed to the Examiners they issued or suggested a recommended Report or Order and then exceptions were filed to the recommended Report and Order of the Examiners and replies to those exceptions. Then Division One of the Commission issued what I respectfully submit an Answer that would not be questioned as prehaps the most exhaustive and certainly one of the best considered and reasoned Orders that has ever been issued in Commission history, containing 234 pages which the plaintiffs with commendable candor portions of which the plaintiffs stated in their Petition for Reconsideration they had not read or considered at the time they filed their Petition for Reconsideration.

THE COURT. Are the pages in that report -- they are not readable in my eyes and I cannot find anything that is sufficiently magnified so that ---

MR. BISHOP. We will get those blown up for you and make them available to you for your

inspection. As a matter of fact we will file with theCourt at this time what all of the parties -- we will file with the Court a blown-up copy of that Appendix for the working members of the Court. That is an exact reproduction, Your Honor, of the portion to which you have referred and that is the Appendix to the Order of the Division, Appendix C, beginning on page 636 and continuing through ---

THE COURT. That is right.

MR. BISHOP. 756.

THE COURT. All right, I am glad to have that.

MR. BISHOP CONTINUES: Yes, sir. Those Petitions for Reconsideration were filed and replies to those Petitions for Reconsideration were filed and then the Division issued their -- Division One as an Appellate Division issued their Order denying the Petition for Reconsideration. Then the plaintiffs filed before the Commission Petitions for Declaration of General Transportation Importance and that was denied. I mention that procedure simply for the purpose of illustrating and emphasizing the fact that the very issue that is before Your Honor this morning

already has been exhaustively considered by the Administrative Agency which has the expertise in the field and to which Congress has delegated and charged with the responsibility of making the factual determination of the issue. Now, it has been argued this morning from a factual standpoint and as I understand from a hurried look at the affidavits and as I certainly understand from the very able presentation by my friend Don Smith this morning the issue involved is that these plaintiffs now say that if these Orders become effective we have a potential diversion or loss of traffic which we in which we are participating today to some extent. That was the principal ground of opposition. There were two grounds of opposition from the plaintiffs that runs throughout this record and that is exhaustively considered by the Commission. The first was that there was actually no need because they contended that a satisfactory service presently existed, either single line or in interchange, that is where the one carrier will transport the goods for a part of the shipment and another carrier will then take over the shipment

and transport it beyond, interling freight or interlining equipment. They said, Number One, that under the Act there is no public need, and, secondly, that if a public need does exist for the service that it would have an adverse or serious effect upon the existing carriers. That was their thrust of their entire opposition throughout the proceedings. Now, that very issue - and, incidently, that is the issue they now present to the Court with the additional burden that they must show now not that they would be adversely affected but they must now satisfy this Court beyond any reasonable doubt to the Courts' reasonable satisfaction that irreparable damage would result to the plaintiffs. With that additional burden imposed by virtue of the Statute and under the TRO that issue has already been determined a minimum of four times by the Administrative Agency. It has already been briefed four times exhaustively. It was briefed on the original briefs to the Examiners. And some of those briefs contained three and four hundred pages. It was briefed on the Exceptions and replies thereto to the Examiners Recommended Report and Order. It was briefed

on the Petitions for Reconsideration and replies thereto. And in so far as Bowman Transportation and the other successful plaintiffs are concerned most of those it was briefed on the supplemental exceptions Motions to file and the replies thereto. Now, what Your Honor is now called upon to determine were briefed and exhaustively considered by the Commission and I might add for emphasis that the Report of the Commission was a unanimous decision that there was no serious adverse effect on the protestants, the plaintiffs here. As a matter of fact the Report, the Order of the Division refers to this matter on page 114, MCC page 610, and that is a portion --- the top of page 611, and that is the portion of the Order that directs itself to the contentions made by the plaintiffs here and made by them four previous times before the Commission; three of those times as stated here as shown by the record unsuccessful. I quote that portion beginning at the bottom of page 60 "and undoubtedly granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier's services." It is also true that

the above described Grants of Authority would subject some of the protestants traffic to the possibility of diversion. That is the argument made here - with the exception of one carrier here, Holloway, however, protestants have not shown that they would be seriously adversely effected by such grants; nor does it appear that the operations of any existing Carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Citing the Liberty-Trucking, Case, "Whereas, the operations of Holloway which transports specified commodities in a limited territory may be seriously adversely effected the gains to be derived by the shipping public in general far out-weigh any adverse effect this carrier or any other protestant may experience." End of quote. Now, with respect to Holloway, as shown here, that carrier had only limited specified commodities as known. And it is critically important to note and remember that Holloway operated only between the Gadston and Birmingham territory and Kansas City; that not only had limited commodities but as noted by the Commission had limited territory in so far as the proceedings

were involved; and there is where the Commission affirmed or later determined that it would not have any serious adverse effect on the plaintiffs in this proceeding. Now, what I read you -- well, first the question; there are four questions really involved before Your Honor, that Your Honor will have to determine in this proceeding. And those it has been suggested by the United States District Attorney that those are well expressed in the Virginia Petroleum Jobbers Association case; and the citations will be furnished to you. And those four questions are these: The Court says that in those cases that the following criteria or guide lines guided, that is, where there is an application for a temporary restraining order of a final administrative decision, Number one, has the petitioner made a serious showing that it is likely to prevail on the merits of its case; on response to that as this Court well knows on the basis of its long experience that in order to overturn an Order of the Interstate Commerce Commission the burden rest on the plaintiffs ultimately to show that the Order does not contain substantial evidence and other presumptions support the Order of the Interstate Commission.

Now, there is certainly substantial evidence in this record, involving all, of all the parties and it is one of the longest and most detailed perhaps in the Commission's Motor Carriers history and we respectfully submit that it would be impossible for them to show that on TRO where all they present are affidavits of possible diversion. The second issue that the Virginia Petroleum Jobbers case proposes for the Court is, Number two, has the petitioner shown that without such it would be irreparably injured. Now, in that particular instance it is noted that issue has already been briefed and considered four times. The Commission has said in its expertise on the basis of a careful consideration of that tremendous volume of evidence and the long hearing and the multiple arguments before the Commissioner on that very issue that it has not been shown to the Commission that any serious adverse effect would be had and that in any event that the public as noted by the Commission that the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other may experience. May I digress just long enough to say this, that those are the affirmative findings of fact by the Commission. This Court knows by analogy

that when this District Court sets through a trial and makes a finding of fact that the Circuit Court of Appeals of this Circuit is not going to be behind that finding of fact, unless it is purely arbitrary or capricious; and certainly this same analogy would apply here, I don't believe this Court will go behind the findings of fact by the Interstate Commission, first that there is no serious adverse effect and any effect is faroutweighed by the substantial public hearings through out and established in this record. Now, the third issue that this Court has or the third question is, will the issuance of a stay substantially harm other parties interested in the proceedings, which is - - which averts to the proposition of the potential diversion or loss of traffic. Now, just as a matter of law, in the first place the Commission has affirmatively found, I say to you that the position of the plaintiff in that connection is factually untenable having been found by the Commission that it does not exist; and secondly, that even if it did exist that there was some potential diversion or loss of trade, that it would not judically support a TRO. Now, this Court inquires and properly, what authority do you have

for our opposition where does exist that it would not support a TRO. As noted by Mr. Cross in his argument the Frozen Food case a c nas been xeroxed and handed to Your Honor is one support in that connection and is a Three-Judge decision but if you will look at the very end of that decision, as noted, you will find a copy of the single Judge order, the District Judge order with respect to the application for TRO where that principal is enunciated and applied. Now, in addition to that I would like to refer very briefly to the Court the case of Railway Express Agency against the United States, and incidentally that Supreme Court decision where the Court stated and I quote:"Further more the application, and this was an application - - -

THE COURT: Now, you are reading from the brief?

MR. OULAHAN: Yes, look at the top of page 13 for the purposes of emphasis, that is the brief of Bowman. "Further more, the application disclose no irreparable injuries to the Railway Express" and I might interpolate to say, Your Honor is familiar with the Railway Espress, a carrier, because the Commission order other than a possible loss of trade, that might be incurred if United Parcel were permitted to proceed under its authorization,

and in that case it was a Three Judge Court denying a preliminary injunction and that was the language of the Court in that case. And also in the Aero-Mayflower case, where the Court said, and again I quote: "Plaintiff's application to engoin the Commission from - - issuing a certificate of convenience and necessity in accordance with the challenged order was denied at the adversary proceeding. Since it appeared to us interlocutorily, that no prospect of irreparable injury to plaintiffs could be shown beyond a possible loss of some trade which might be suffered by plaintiffs if TEK should operate under the certificate before the case could be determined upon the merits" End of quote. So those are the decisions together with the one already suggested to support that proposition. Now, fourthly, and lastly in so far as the criteria are concerned that would gather in this Court in its considerations or issuances is whether the public interest, and that is the prevailing one, very frankly, is Number 4 realize the public interest. It is noted the Commissioner stated that the public interest lies in the approval of three of the ten applications; and that issue also was exhaustively briefed and determined. Inso

far as Bowman is concerned, Your Honor, I do not propose to discuss or consume the time of the Court this morning with discussing the factual information set out in the affidavit of Mr. Garcia Salyers, President of Bowman, except to state this: If Your Honor, will note in this Order, and Your Honor is familiar with the provision of the Interstate Commerce Act imposing upon the recipent of authority or the holder of authority a burden in addition to the benefits granted it is a two-way street; when a carrier obtains a certificate it has the benefit of providing that service but it also assumes the duty and responsibility. Bowman's affadivit shows that when the Order of Division One, following the Order of Division One granting it authority that Bowman proceeded with dispatch to get ready to provide the service that was contemplated under the grant, and let me just state in a brief summary that the affidavit of Bowman establishes that it had contacted, that it contracted to acquire and did acquire, already acquired additional equipment to dedicate to this service; that in addition to that it did not proceed without judicious and economic thought. That in its plans it obtained options on the then market to

obtain equipment. And the affidavit shows that under the options themselves that a favorable price was obtained by virtue of the option if Bowman is in position to exercise to provide the service that would result in savings of over $40,000.00 there in exercising the option alone and that Bowman has obligated itself - - that Bowman has obligated itself and invested over one and a half million dollars in equipment, and if you take the prime rate of interest alone at 6% that represents $90,000.00 per year in interest charges alone. The affidavit also sets out the cost of the new units, ten acquired, the $1,600,000.00; that it has invested one and a half million in other vehicular operations, some of which was needed in connection with this present service; and that option subject to cancellation by Bowman, if the certificate is not issued, would expire in a period of 90 days from October 1st, 1972. The other ways in which there is damage to Bowman, in economic loss to Bowman are set out in the affidavit. In closing let me say it is not of final importance and controlling importance what the damage to Bowman is going to be or what the potential loss of trade or damage to the plaintiffs might be. The

real damage lies in the public interest following a hearing that has consumed an extended period of time and also the administrative lag and I say advisedly, that judge the shipping public and the people who buy their goods at the various places and the 933 Public witnesses that are charged with maintaining an inventory and where this record shows where that inventory is not properly supplied they have to put more money into inventory at inflated prices and where small receivers of goods all over this whole territory that is involved in this proceeding testified at the greatest out-pouring of public witnesses in any motor carrier case in the history of the Commission came forward in this case; and they testified not by tens but by hundreds - that we are not receiving the service that we need, we are having to invest more and more money in inventory because our goods are not getting here on time; and that in certain instances if something is not done we are going to have to go out of business. Now, that is not the motor carrier, that is the people who testified in this proceeding, and the Commission after reviewing that said "we are going to do something about it, the time has come to do something about it; we are going to grant three

of the ten applications": and it is on the basis of that record and that interest to correct an obvious defficiency in existance that we definitely urge that this Court deny the TRO and then set the case down for hearing, finally on the merits.

MR. PRESTRIDGE: Your Honor, I will be very brief; I think all of it has been covered. I am representing Red Ball Motor Freight in opposition to the granting of the temporary Restraining Order. Along in furtherance of what Mr. Bishop has said in regard to the public interest and in light of the Court's mandates in the Virginia Petroleum Jobber's Case as to what the Court's control is and what the Court must consider in granting the TRO I prepared an affidavit on behalf of or with the cooperation of the Vice-President of Red Ball and I filed it with the Court. In the affidavit I have attempted to show and have shown, I believe, the steps and the expenditures to which Red Ball has gone since the Division Order granting the authority sought, that is money that has been spent in good faith in furtherance of its desire and willingness to operate and provide service for which Interstate Commerce Commission found that was needed. In addition, Your Honor, and I cannot emphasize this

enough as to the public interest where in lies the public interest as was dictated in the Virginia Petroleum Case, and I will also point out, Your Honor, there is some 8th Circuit opinions in Middlewest Motor Bureau vs. United States, at 433 Federal 2nd, 212, on which an application for certiorari was denied by the Supreme Court; at 402 U. S., 499, the 8th Circuit in that case quoted verbatium from the Virginia Petroleum Case as to what the Court's role is in considering a TRO and at the conclusion of that quotation the 8th Circuit said, "from these considerations" and I am quoting now: "from these considerations it is evidance that the Federal Courts must be exceedingly careful in granting extra-ordinary relief of a stay of an Agency Order." Now, in the affidavit of Red Ball we have shown, Your Honor, where we believe the public interest will be served by denial of the Temporary Restraining Order which would authorize the Institution of a single line Motor Carrier Service by Red Ball between Atlanta, Birmingham and Greenville, on the one hand, and a multitude of cities, towns and villages in the states of Texas, Louisana and Arkansas which are not served by any other motor carrier in a single line service between

those points. None of these plaintiffs, nobody else, Your Honor Red Ball would be the only single line motor carrier between Atlanta, Birmingham and Greenville on the one hand and on the other the points that are set out in appendices B, C, and D to the affidavit of Mr. McCarthy. I think, Your Honor in considering the TRO and under the mandates of the Virginia Petroleum and Middle West Bureau Cases this Court must consider the public interest. Certainly it will be tried on the merits fully but at least at the TRO stage some consideration must be given to the effect the TRO will have on the other parties, Red Ball and the public. I want to make one other observation; Mr. Smith has alluded to the fact that the Interstate Commission reversed the report and order recommended by the examiners in that case; of course that will be more fully briefed and argued on the merits, Your Honor, I am sure, but I would call your attention that the Commission as an Agency in making its' decisions is not bound by the findings or the conclusions of the examiners. Thank you, sir.

THE COURT: Mr. Prestridge, did you leave a copy of the affidavit with me or - -

MR. PRESTRIDGE: No, sir, filed it with the clerk, Mrs. Lindquist, I believe.

MR. OULAHAN: May I have five minutes to reflect with my colleagues here?

THE COURT: Yes, sir.

MR. OULAHAN: The plaintiffs and defendants are well represented today by local and national counsel, but the one thing that seems to have been missing and in particular from our fried Don Smith, are what about the public? The ICC represents the public in granting the certificate. We are here before you today, Your Honor, to protect that public interest and I just have a few words to say on that subject; taking two things out of the Virginia Petroleum Jobbers case; the first is, the reasonable likelihood of success. Forget about the TRO but lets' take a look at the long ahead. Are the plaintiffs going to prevail in this case because if there is no reasonable likelihood they are not going to fail they are not entitled to a TRO; and on that point Your Honor as we set forth in our brief which is attached to our petition to intervene which is exhibit B, at pages 42 and 49, you will find that the law is very clear and is laid down by the Supreme Court that economic

injury is no grounds for relief in a trucking case; that there is no vested right in the preservation of your competitive position when you have a certificate from the Commission and where the records shows an inadequate service, based on the evidence of public witnesses, the Supreme Court will reverse a grant of a certificate by ICC where the ICC did not pay any attention to it. Now, in the case below on this subject, Your Honor, the hearing examiners said the plaintiffs should be able to remedy the deficiencies a service which exists in this large service area. The Supreme Court in U. S. V. Dixie said that is not the law and that is what the Commission said in its' findings here. Now where lies the public interest, and my friend Don Smith has said "we are serving the public, there is going to be no irreparable harm to the public, keep things as they are." What is the status quo? Now, Your Honor, as you will have seen from the Commission's findings which are not refuted at the present moment, I went through various affidavits filed this morning, while I may have missed a couple of things in there I did not see any thing in there about refuting the evidence before the Commission about inadequate

service. The Commission at pages 596 through 600 of its' report very clearly shows inconsistent and excessive transient time, service restrictions, refusable to pick up traffic, embargos, interline difficulties at places like New Orleans because of the fact that Johnson, for example, cannot single line traffic from the northeast and southeast to the southwest area; and the result of the shippers is we are losing customers and business; we are penalized under a contract penalty clause; we cannot maintain the necessary inventories; our production schedules are disrupted; we cannot expand and in some cases we are even turning private warehouses -- indeed I know a lawyer cannot testify but I rode into town last night with a customer of a trucker which shall remain nameless and he told me that the trucker would not pick up interline traffic here and how he had to revert to using either private carriers or getting trailers tacked onto somebody business. That is precisely the kind of thing that we are talking about. And under those circumstances, Your Honor, the public interest has not been served and we believe that you should not grant a TRO. Now, my friend mentioned that in National Transportation policy - - as Your Honor knows that is set forth in

a footnote prior to 49 U.S.C., Section One.

I would like to point out that that transportation policy requires that the Commission in administrating truck traffic promote efficient service and further all of the policy is to assure adequate transportation to meet the needs of the community; and the Supreme Court in the Schaffer Case, Your Honor, 355, U. S., 83-95, implemented that and pointed out that the implementation of that policy required the Commission to evalute the needs of shippers. The Commission did not do it in that case, they did it in this case; and in making their evaluation and as a fundemental basis for their decision and a grant to these three certificate holders, particularly Johnson, they found that service was grossly inadequate. Under those circumstances, Your Honor, we believe as the shippers that a TRO should not be granted and then eventually when you hear the case on its merits we think you are going to sustain the Commission.

THE COURT: Thank you.

MR. SMITH: I would like to make a few brief rebuttal remarks and I think there are some other attorneys here that would like to also respond to some of the statements if the Court will allow it.

THE COURT: All right, go ahead, glad to hear anything you have to say.

BY MR. DON SMITH:

Now, I think at the outset in response to some of these arguments, the eloquent speeches have been made and they have overlooked the facts that if we agreed with the Commission's decisions in its' findings this lawsuit would never have been instituted; and it is for that reason that we are anxious to have the grant of the TRO. As we have stated in our complaint we believe that the merits of the case will be decided in our favor. And we feel that the findings of the Commission in Division I were erroneously made based upon a mis-application of law; the setting of double standards, and, interesting enough, nowhere in the arguments this morning have you heard anyone make reference to the various serious constitutional questions which we have gone over in our complaint. So this is not a question of asking this Court to compare its expertise to the alleged expertise of the Division I under questionable circumstances. It is the asking of this Court to give us the opportunity to show where the Commission committed error in the evaluation of that testimony and also invaded the constitutional rights of these various plaintiffs in

making its decision. Now, we have heard from several of the interveners counsel that this manner was thoroughly considered by the Commission and the time table has been given; I think that is significant for two reasons; first of all, I think we must realize that the fair consideration that allegedly was given may have been given by Division I, but after pointing out to the Commission the allegations which we have made in our complaint, this voluminous record the voluminous report, all of those briefs were summarily denied within a matter of twelve days after their last submission. That is not thorough consideration. Now, they talk about the institution of this which they propose Your Honor, I have had the pleasure with working with everyone of the counsel for these interveners in many different cases and they are intelligent men and able motor-carrier lawyers, and they know as do their clients that there is nothing final until the certificate of that Commission has been issued and the fact that they may have made studies and they may have gone out and taken options is one of the best reasons why I think this Court ought to grant the Temporary Restraining Order. They in fact are arguing to you - "look what we have already

done, therefore, don't grant that Temporary Restraining Order," but if you don't grant it today and we hear it on the final merits of the case at some time later then they are going to come back and say "Look at all the things that we have done and what you will destroy - If you reverse the decision of the Commission"; in other words they are trying now to argue certain merits of this case that has no place in the Temporary Restraining Order hearing and it should not be considered by this Court. Through my newly acquired friendship this morning I have certain quotations from me and then arguments made by the 41 shippers, and he tells us that these shippers are having to do such and such. They have had to do such and such for seven years; there is no urgency about permitting these people to start an operation that could be reversed. I would point out to the Court in response to certain arguments that have been made along the four basic criteria that were enumerated by Mr. Johnson on behalf of the Commissi I would call the Court's attention to G. B. Searing vs. United States, District Court Case from Eastern Tennessee, 1969, and that Court says, "This Court believes that the more proper rule is that it is

not necessary to justify the issuance of a Temporary Restraining Order, that the plaintiff's right to a final decision after a trial be absolutely certain and wholly without doubt. That if the balance of hardship tips decidedly towards the plaintiff it is ordinarily sufficient that the plaintiff has raised questions going to the merits which are so serious, substantial, difficult and doubtful as to make them fair ground for litigation and thus ask for a more deliberate investigation;" and the Court in that same Case took judicial notice that a carrier serving a particular market is apt to undergo a more rigorous hardship if confronted with a new competition than our carriers which are granted new authority in the same market. Now, we are talking about irreparable damage; the argument has been made - "look at these giant motor carriers," and I refer to this area, if the Court please, where do these carriers recover their loss of revenue in the damages that they sustain during the time when this action is pending if they are allowed to institute the proceedings and then this Court should make the determination that the Commission was wrong.

We submit to the Court that the irreparable damage argument is valid. The diversion, by the very words of these representatives would take it away from the plaintiffs and other carriers and as a result would be injurious not only to the carriers and to the public but not preserve the status quo in furthance of the National Transportation policy. Mr. Phineas Stevens would like to address the Court.

THE COURT: All right, Mr. Stevens.

BY MR. STEVENS:

May it please the Court I represented before the Commission certain of the plaintiffs in this proceeding, Gordon Transport, Camel 66, Red Lines, Transfer & Storage, and several others.

And I would like to submit to Your Honor that if the argument of the distinguished counsel for the intervening defendants is correct that in effect it will mean that our Statutes for review are completely ineffective, that there would be no purpose in such Statutes. If the Court must assume that the Commission in all instances made no error of law why provide for a review. If the Court cannot preserve the status quo so as to give a Three Judge Court an opportunity to review the Commission findings without being confronted with

a situation that has changed since the Commission made its decision that would put the Court in a position where they in effect would be taking money away from the defendants, it would be closing down the terminals, it would be letting off employees, that is the position with deference, Your Honor, that the defendants would have you by denying this temporary Restraining Order place the Three Judge Court in when we come back, as Mr. Smith says, they want to come back with the situation where the Three Judge Court would be compelled to close terminals, close down service and all in order to find that the Commission did make errors of law as we contend. We ask only that the status quo be preserved in order that the Three Judge Court can make these determinations. Mr. Cross on behalf of Johnson pointed out that all the plaintiffs do not oppose all of the three applicants that were successful. That is, of course, correct. But I do not see that it really makes any significant difference because at least some of the plaintiffs oppose all of the defendants; for example Gordon Transport that I represent opposes all of them. He states that all will not suffer or do not claim that they will suffer irreparable

damage by the grant, for example, of the Johnson Application. It is true, but I think that if only one could be found by this Court that it would suffer irreparable damage that is sufficient; the fact that others may or may not is with difference in materials. We have for example an affidavit by Gordon Transport opposing all of the applications that it would result in irreparable damage. That irreparable damage, Your Honor, is not simply the loss of revenue and a loss of profit that might go to its stock holders. As described in the affidavit filed on behalf of Gordon it would result in a chaotic situation, a disruption of traffic patterns that would distort the existing operations to such an extent that chaos would result. Everyone in this proceeding has recognized from the beginning that the grant of these applications would result in massive re-alignments of traffic. The defendants have established that in their affidavits; that is rather a fantastic figure that Johnson has come in with and its projections that within six months time almost a million dollars would be diverted from existing carriers and transferred to Johnson. Now, we say only that such massive disruptions should not be permitted to

take effect until the Court has an opportunity to determine whether that is in effect justified. The Johnson affidavit is carefully drafted where it does not state that this diversion would come from these particular plaintiffs. Well, whether it does or does not we submit is not really material here. If so I cite then the Red Ball affidavit. It says percisely that they are now interlined with traffic plaintiffs and if they are permitted to engage in single line instead of joint line operations they will stop interlining their traffic with these plaintiffs and start handling it all themselves. Now, I would like to mention one factor here that I think must be emphasized, Your Honor. As Mr. Smith says this is not simply a battle of major motor carriers; there are many motor carriers involved, many large but some small. First, I will talk about the big ones because that is what the defendants would have us consider. They point to the fact that Gordon Transport is a healthy carrier; it is a healthy carrier, it is a large carrier; but I would like to point out that the examiners made certain findings of fact; these findings of fact were not challenged and they are the only findings that the Division adopted.

Adopted them verbatim because they were not challenged; those findings of fact as to this large carrier include the findings that the majority of all of its traffic would be subject to diversion. Now, it is true that it is large but that makes the disruption even more significant. What will happen to the public served by Gordon if over 50% of the traffic that it is now transporting throughout multiple states is subject to diversion? The results are real frightening - - will it be just specific terminals? The examiners found the applicants did not challenge - - the Division found that as to certain terminals, such as Birmingham, 98% of its' traffic would be subject to diversion. Should this Court permit a terminal to be subject to 98% of diversion simply because it is a large carrier. I submit that the fact that it is a large carrier makes it more important that Birmingham have the service of that large carrier. That is a finding in the Division reports. Also in the Division report as to this large carrier the Division stated specifically diversion of their freight to other carriers - -

THE COURT: What case?

MR. STEVENS: I am reading from page 768 of the Division Report. The findings are fact as to the plaintiff Gordon Transport. Diversion of their freight to other carriers would seriously effect Gordon ability to render adequate and satisfactory service. And will result in increasing its' operation of 50 miles between certain of its' terminals. In 1966 Gordon operated empty vehicles a total of over a million miles much of this between points involved in these applications. Now, that is a fact, the Division finds it as a - - -

THE COURT: I did not find that here. Now, where were you reading from?

MR. STEVENS: 768 of the Division Report. It is in Appendix G; Your findings of fact relative to the protesting Carriers.

THE COURT: Here it is. I have it.

MR. STEVENS CONTINUES:

I read the last two sentences of the findings relating to Gordon right up here in that particular finding. Now, another important thing that I want to emphasize, Your Honor, is this; no one is contending that these grants will supply service to any community that is now without service; or stated in another way that the granting of this

Temporary Restraining Order will deprive any community of service; the issue is simply "will that be provided in two line service or one line service," is mainly what the issue is. But that is not the only issue. We have heard arguments that the public interest must be preserved and is dominant. We of course agree that it is the public interest that is controlling but I cite you to another finding that appears on page 777 of the Report; as to the plaintiff, Campbell 66 Express. Now, there they also found that Campbell would be subject to massive diversions of traffic. Now, what would this massive diversions do to this carrier The Division found as a matter of fact that diversion of freight from its' terminal points will result in a deterioration of service at many of the smaller points served by Campbell, particularly in Mississippi which are not proposed to be served directly by these applicants. In other words the Division has found on page 777 that if these applications are granted there will be a deterioration of service to points they do not propose to serve. Now, it is true that when they got over into the body of their report they forgot about this finding, they gave no effect to this finding, they did not

discuss this finding but that is simply one of the errors of law that we will cite to the Court when we get to an argument on the merits. I cited here merely to show that this is not a one way street, that more service means better service or enhances the public interest. The Division itself has recognized that this diversion as to small points they do not propose to serve will result in a deterioration of service . The examiners found that the grant of any of these applications in its' overall aspect would result in a deterioration rather than improvement of service; so it is not just clear that grants of authority equals improved service. That is one of the issues of course, and we say that when the Division found that as a fact then did not give effect to it it was an error of law. But as to other - - - we have talked about the large carriers, now what about these small carriers. Mr. Bishop argues that these matters have been repeatedly argued and rejected by the Commission. Now, that is correct. They have been repeatedly argued by the Commission but we say that one of the errors is that they made no findings on this in their Report, they gave no consideration to it and it was an error of law

because they did not do so. For example, Red Line Transfer & Storage of Pine Bluff; what did the examiners find as to Red Line? They found that the grant of one of these applications would put them out of business. Now, the Division ignored that. We argued it, yes, but they did not deal with that finding at all. And they have cited that these large carriers operating with big profit margins, good operating revenues but they don't say anything about Red Line whose profit margin is paper thin or non-existent, an operating ratio of 99. and a fraction. It has no margin to withstand additional competition and that is shown in this. In those instances we submit only that the Court should not enter an Order which will resolve in all of these changes so that when the Three Judges Court sits on it the Court cannot properly review this as the Commissioner reviewed it but is going to have an entirely different case to look at. Now, they rely upon a Division, I mean a District Judge's refusal in Texas to not issue a Temporary Restraining Order in the Frozen Food case. We are not submitting to Your Honor that the issuance of a Temporary Restraining Order is something we are entitled to as a matter of right. Obviously we

recognize that we bear the burden of showing to Your Honor that we will incur irreparable damage. We submit that we have. In that case the District Judge said simply that the plaintiff had failed to establish that, that they show simply they are going to lose some revenue which he did not think constituted in that case irreparable damage. Our affidavits go much beyond that. We show many changes other than simple diversion of revenue. The pleadings in this case even show some of the applicants used the phrase that if other applicants are granted that it will strike a lethel blow or death blow to their operations; and that is much stronger, we submit as a factual matter than what was before the District Court in the Frozen Food case. Now, we submit Your Honor, that where the plaintiffs in this case will suffer as they have shown this massive disruption, where the defendants have shown only that they have made plans, they have acted on this, we say that the balance there should be to leave matters as they stand. Of course these defendants have bought equipment; they buy equipment every year, they have to buy equipment every year. But I say this, with that, Your Honor, if they bought equipment and made investments on the

basis of this order that they should not be heard to say that that should tie the hands of this Court. There has not been a single 24 hour period that has existed in which they have been in possession of a certificate that will justify that. Or an order authorizing the issuance of a certificate. When this case was filed in this Court the matter was still pending before the Commission on petitions which could have resulted in a review of the entire proceedings. As soon as the petitions for reconsideration were overruled as Mr. Smith has pointed out, instead of just letting them be in the dark as to whether a suit would be filed or not, we promptly notified the Commission that a suit would be filed and we sent them a copy of the letter and so then the Commission promptly came back and gave us this period of October 6 to file ourcase and request a temporary Restraining Order. We filed before that dead line. So theyhave known all of this, and I submit, Your Honor, that they should not now be heard in this Court that the Court should not preserve the status quo because they have gone out and acted on the reliance of the Commission, Thank you, Sir.

THE COURT: Anyone else want to be heard? Personally I think the case has been pretty well covered. And about all I can say to you is that I have not had, as I have told you, have not read all the affidavits and I have not read all the briefs but I do not have anything else to do but to do this for the next two or three days and I believe you will be justified in expecting some action out of the Court pretty soon. I am going to first dispose of the question of The Intervention of the Shippers, which I hope to be able to do tomorrow and I don't know whether I will get My Order to you on the Motion for Temporary Re-straining Order tomorrow or whether it will be Monday or Tuesday but I will get it to you just as soon as I can. I think the Court ought to give some consideration to the various contentions made and I don't think that our Honor has been able to do it, maybe there are lots of Judges that might and all that but they can do things I cannot even get in sight of but I never did like for a Judge just to arbitrarily when I was practicing law rule against me and act as though I did not know anything at all and probably I didn't but I think a Judge ought to give some consideration to these problems and that is what I

am going to try to do. I feel like another two or three days in view of the time that has lapsed will not be too detrimental to any of you men or to any of your clients; I think you will all pretty well survive in some way or other. Maybe I don't know how you will do it but that is your problem, but at least I am not going to add to your burdens any more than I have to. Now, here is one thing I would like for you men to talk about; regardless of what the Court might do about the Temporary Restraining Order we have got to dispose of this case; Judge McHaffy is a member of the Court of Appeals of this Circuit and Judge Williams, in fact this is his court room, I don't have a court room, I just borrow this one occasionally; we have got to figure out a way as soon as we can to try this and I have not talked to the other Judges; but I have given some thought to the matter and it would seem to me with all the voluminous records that is in existance we might consider all of that as being in evidence in this case for the use or such portions of it as may desire and then this is a case that will have to be decided, that is, briefs will have to be submitted and studied by the Court and then oral argument will be illuminating to the

Court. Of all the cases that I have come in contact with I think oral argument is imperative in this case following the filing of briefs; I just don't see how the Court could proceed in any systematic way, any other way. I would like for you to give some consideration in your own discussions about the filing or the submission - - service and submission of briefs in sequence; I wish you would give some thought to that and advise me of any conclusions reached; if you can make that conclusion yourself it will just save us making it because the Court is going to make it if you men don't. Make it and you know more about your own work now. The only thing I am going to say I just don't want anybody dragging their feet another six or seven years - - I want to get rid of this thing one way or the other but we would prefer very much for you to work out your own schedule; then I can probably assure you we the Court will act from this and expedite it and there will be no dragging of the feet by the Court. I know that both of my associates are not inclined to do that. And I think, I stay confused enough, confused enough and if I can keep business moving it relieves my mind of some problems that maybe I did not understand.

I don't like to allow too much to accumulate at one time, so if that is about all we can do Court will be in recess, but let me ask you this question, have any of you thought about the problem that I mentioned about your briefs. Have you had any discussions that might lead to some agreement to proceed on?

MR. CROSS: I have discussed it with counsel for the Interstate Commerce Commission who is not present here today but he will have to write the brief for the Commission on the merits or arguments in support of authority. He told me last night that if the opportunity arose today as it has now, to tell the Commission, the Commission wants 60 days in which to prepare its' brief. Now, under that type of scheduling and as is customary in these Three Judge Courts I would think that the plaintiffs would want to fix a date on which the plaintiffs file, 60 days thereafter the Interstate Commerce Commission and the intervening defendants would file; and perhaps 20 days thereafter the plaintiffs file a reply brief, then the Court would fix the day of argument. Now, I would like to explore, like to see the plaintiff move ahead with the filing of their brief as prompt as possible.

THE COURT: I would too.

MR. CROSS: I have not explored it with the plaintiffs.

THE COURT: I have not either; I was just suggesting that you might talk about that a little bit here today, discuss that matter and then advise me so that I can talk to the others and you will hear from me on both of these projects just as soon as I can. I want to express my appreciate to the courtesy of all of you and the thoroughness of your argument, they have been helpful. It has cleared up some things in my opinion. It will be very helpful to me and all I can tell you I will dispose of them as quickly as I can and the Court will be in recess.

MARSHAL: Court is now in recess.

CERTIFICATE

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the proceedings had in the above entitled and numbered cause at Fort Smith, Arkansas, on the 1st day of November, 1972; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said proceedings as shown by my notes.

Reporter

Dated this 15th day
of November, 1972.

APPENDIX E

Transcript of hearing before Three-Judge District Court on July 24, 1973.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

- x

ARKANSAS-BEST FREIGHT SYSTEM, INC. ET AL

VERUS : NO. 72-72-C-66

INTERSTATE COMMERCE COMMISSION

- x

BEFORE A THREE-JUDGE COURT

HONORABLE PAT MEHAFFY
Eighth Circuit Court of Appeals
HONORABLE JOHN E. MILLER
Senior District Judge
HONORABLE PAUL X WILLIAMS
District Judge

Fort Smith, Arkansas.
July 24, 1973.
9:30 o'clock, a.m.

APPEARANCES:

DON A. SMITH, ESQ.
ALLEN WOOTEN, ESQ.
Post office Box 43
Fort Smith, Arkansas. 72901.
Representing Arkansas-Best Freight System, Inc.

DREW L. CARRAWAY, ESQ.
618 Perpetual Building
1111 E. Street, N.W.
Washington, D.C. 20004
Representing Mecury Motors

M. WARD BAILEY, ESQ.
2412 Continental Life Building
Fort Worth, Texas. 76102
Representing Braswell Motor Fgt.

FRANK W. TAYLOR, JR., ESQ.
WENTWORTH E. GRIFFIN, ESQ.
1221 Baltimore
Kansas City, Missouri. 64105
Representing Transcon, Time D.C.

PHINEAS STEVENS, ESQ.
Postoffice Box 22567
Jackson, Mississippi. 39205
Representing Campbell 66

SEYMOUR GLANZER, ESQ.
Interstate Commerce Commission
Washington, D.C. 20423
Representing the ICC and the Government

MAURICE F. BISHOP, ESQ.
601-609 Frank Nelson Building
Birmingham, Alabama. 35203
Representing Bowman

JERRY C. PRESTRIDGE, ESQ.
Clark, Thomas, Harris, Denius & Winter
Postoffice Box 1148
Austin, Texas. 78767
Representing RedBall

COURTS OULAHAM, ESQ.
839 17th Street, N.W.
Suite 400
Washington, D.C. 20006
Representing Lochway, et al

JAMES W. BLAIR, ESQ.
Crouch, Blair, Cypert & Waters
111 Holcomb Street
Springdale, Arkansas. 72764
Representing Shippers

DONALD E. CROSS, ESQ.
918 16th Street, N.W.
Washington, D.C. 20006
Representing Johnson Motor Lines

ROBERT JOHNSON, ESQ.
Ass't United States Attorney
Western District of Arkansas
Fort Smith, Arkansas. 72901.
Representing the Justice Department

ROBERT L. JONES, JR.
Jones, Gilbreath & Jones
Merchants National Bank Building
Fort Smith, Arkansas. 72901
Representing Shippers

C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing before Honorable Pat Mehaffy, United States Court ofAppeals, Eighth Circuit; Honorable John E. Miller, United States Senior District Judge; and Honorable Paul X Williams, District Judge, at 9:30 o'clock, a.m., on July 24, 1973, at Fort Smith, Arkansas; that the Appearances as stated appeared representing their respective clients; that during said Hearing the following proceedings were had in connection therewith, towit:

(Reporter's Note:- Where it is shown that John H.D. Wigger, Jr., is addressing the Court it should be Seymour Glanzer, Esq., addressing the Court as Mr. Wigger was not present at said Hearing.)

P R O C E E D I N G S

9:30 a.m.

MARSHAL: Everyone will rise (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

JUDGE MEHAFFY: Gentlemen, without any further preliminaries I am sure each is well acquainted with this case, FS-72-C-65, than I am because for all I know the pleadings are still continuing to be filed. My individual notion about this case is subject, of course, I have jurisdiction to speak for the Court, is that the way the case has developed and is developing that certainly you are entitled to a Three Judge case, the status that this one is in. I am going to read the Motions, et cetera, before us today. You are entitled to a speedy trial. We are willing to give it to you, but we are not going to clutter up this thing, letting everybody, letting four or five different attorneys argue for the same clients or anything of that sort. And after getting this thing started I am going to ask you all to designate the one who will speak for your interest. The only thing that I know for sure that we are going to do is we are going to take all this business under

submission and each protect everybody's rights, as best we know how to do it; and for the big session a couple of weeks from now that I have heard so much about, that is supposed to be the final, in which I understand some fifteen lawyers are hoping to be here to argue it orally. I will tell you right now, there is no such thing is going to occur. We will give everybody a fair trial but we are not going to sit here two weeks from now and listen to every four or five different lawyers representing every interest in this thing keep us for several days and listen to oral arguments. As I say this is about my notion. I have a little bit of experience with what we call Commerce Laws, know a little bit about this and I want to say just a preliminary statement to tell you that I am going to read to you these things that are supposed to come up today and still are continuing to come up, and call on Judge Miller to express hisself and we have to kinda individually. I would hope that we would get together before the day is over and tell me some tentative conclusion and we may take this whole bag of worms under submission, but that remains to be seen. I assume that everybody wants a speedy trial because the pleadings continue

to be filed, but here they are that I have listed, the things that need our attention this morning. There is a Motion by Intervening Defendant, Johnson Motor Lines for a temporary restraining order to hear and determine plaintiffs' application for preliminary injunction; and to hear and examine Motion for Supplemental Complaint. Next, Redball Freight has filed as an Intervening Defendant a Motion almost identical to the Johnson Motor above. Following that the plaintiffs have filed a Motion to file Supplemental Complaints. No, that is a Motion to file something else here. The Supplemental Complaint asks that the certificate granted to Jones Truck Lines be temporarily and permanently enjoined. Then there is an Intervening Defendant, Johnson Motor Lines, has filed a Motion in opposition to the plaintiff's Motion to file a Supplemental Complaint. Their Motion states that Jones Truck Line, 28-U.S.C.A.-1398, did not establish to Arkansas Best and Mercury Motors in opposition to Jones application. Next, a group of shippers, has filed a Motion to intervene as defendants. They seem to appear collectively as Daisy Manufacturing Company. Daisy Manufacturing Company has filed an answer to the Supplemental Complaint.

The Daisy group has filed a Motion to drop all the plaintiffs except Jones as not real parties of interest. The Daisy Manufacturing Group has filed a Motion to dismiss under 28-U.S.C.-1398, alleging that no party is standing as the party of interest to bring any action against the ICC. The principal of business as in Arkansas. Now, with that statement, I am going to ask Judge Miller, who is more familiar with this than I am or could possibly be because of the recent filings, and I would only add to see if there is some way you gentlemen can't separate it in groups and one of you, if you have any argument, that one of you speak for a group and not have any fifteen arguments or lawyers more or less arguing the same thing. As I said, I am not going to, don't have the power to dominate this Court, I am speaking now as an individual but I have listed what I think are the primary or paramount things and hope you all can be reasonable about these things because I think and we will be reasonable and maybe we can get together; I would not want to say this before everybody but we will make an effort to dispose of this thing in an orderly manner and in such a fashion that will give every body fair treatment; and with that

statement I will ask Judge Miller to comment on his views of the matters that will be taken up.

JUDGE MILLER: I hope the Court, members of the Court can get together on our procedure but I think the one paramount question before this Court for determination today, the first question that should be considered is should the Motion filed, Supplemental Complaint, be granted. If that Motion is not granted then the subsidiary Motions, which are made a part of the response of Jones and certain other persons, would automatically pass out of the case and leaves only for consideration at this time the Motion of Johnson as well as the other two to dissolve a Temporary Restraining Order that was issued, I believe, September 7, 1972. That would come; then the next Motion, which would probably be a more or less a Subsidiary Motion would be the Motion for a temporary or a preliminary Injunction, but I don't see any way to approach this matter without first determining whether or not the Supplemental Complaint should be permitted to be filed. If that is filed then we open a pandora box or some other kind of a box that will be, will raise a great many questions and I am not adverse to answering any questions that arise in the course of a lawsuit

but I think that it is just as important to go about determination of litigation in an orderly fashion. Now, here is what we have got in this matter; this Motion for Supplemental Complaint was filed on June 29, 1973; the record before the Court shows on December 30, 1971, originally denied, the Commission originally denied the application of Jones along with the application of other plaintiffs and cerdited only the application of Bowman, Redball and Johnson. That was in December of '71. On September 1st, the Commission re-opened the application of Jones and on December 6th set aside a portion of its' Order of December 10th in which the applications of Redball, Bowman & Johnson were granted. Then also it entered its' Order on December 6th but on May 29, 1973, the Commission apparently upon its' own Motion did correct, entered a Corrective Order on correcting the Order of December 6th; then along came this Motion. As the matter then stood when this suit was filedyyou had three, we had the Order of Interstate Commerce Commission granting these three applications and denying all other applications; although there was apparently a dissent of one of the Commissioners at that time. Well, the matter

stood that way until the Commission set aside and granted the Jones application. That participated the filing of the Motion for supplemental, to file a Supplement Complaint. That Motion raises in my mind some very serious questions. They have been briefed. I don't know anything else that could be said that has not been said in the briefs of the parties; and any oral argument on that Motion would, I think, just be plain repetition; but I do not construe that to mean that if you have anything to say additionally to what has already been said in the matter, why don't feel any hesitancy in expressing yourself; but that seems to me to be the only orderly fashion that we can approach this case. Then after assuming that the Motion for, to file a Supplemental Complaint is denied, as I said, then we have only two questions left in the case as I see it; one is whether or not TRO should be lifted and then if it is lifted then whether or not a Preliminary Injunction should be granted in accordance with the prayer of Johnson and the other two men; so, if the Motion is granted, then we have got to make some arrangements about how we will proceed then; whether or not we will hold up the granting of the two or hold up the

consideration of Red Ball and Bowman and then let Johnson Motor fight it out with Jones. Again all of this is in the briefs. I cannot imagine anybody more explicit than you gentlemen have been in the presentation of the issues and the thing that is bothering me about the whole - - about that first Motion is the delay and what will be accomplished and whether justice will be served by re-opening the case to that extent. Now, there is the proposition, I have my own ideas about it and I am sure Judge Mehaffy and Judge Williams have theirs, but that is what I would like to have argued first; and then let us determine whether to permit it to be filed, then if we determine that then we will have to go into some other questions; if we determine it is not then there is two questions left for decision today, and that is with reference to TRO and Preliminary Injunction request. I know what is back of the Preliminary Injunction, of course, subjecting to the Order that was written on the TRO, but that is all right; but I imagine this, if the Motion is overruled, the Motion to file Supplemental Complaint is overruled, and those other two what I call Subsidiary Motions are disposed of, and I think people should be pretty cooperative in that respect,

been operating about eight or nine months under that or haven't been operating because of that TRO for eight months. Well, I don't know how long it will take us to decide the case on its' merits. If the Supplemental Complaint is out there, is out and neither do I know how long it will take us to work out a decision with the Supplemental Complaint in there and the things that addresses itself to me, to say the least, is whether or not this Court in exercise of a sound judicial discretion should under that Rule 15-B, whether or not we should grant it; that is what I would like to do Judge Mehaffy is to hear from them on that Motion first. Now, I know counsel, eminent counsel is here, I have had you before me before on a TRO; I have some little advantage, I would have more advantage if I had a more retentive memory than my associates have here because you gentlemen argued that pretty thoroughly on that TRO; if you overlooked anything I could not detect it when I started to write my opinion in trying to answer you gentlemen that was opposed to the granting of the TRO, but that is theway I think it ought to be done, Judge Mehaffy, is to take up this and with reference to duplication of arguments, the arguments

on the Motions to file a Supplemental Complaint, can't be too much under the Rule and under the decisions and certainly under the writers themselves, so as far as I am concerned that is what I would like to do; it is up to these gentlemen here but if I am going to conduct it that is the way I am going to cnnduct it but that is all I can say at this time. What do you all want to do?

JUDGE MEHAFFY: Do you have anything Judge Williams?

JUDGE WILLIAMS: I was hoping to hear from the applicants for the Motion, the Interstate Commerce Commission briefly respond to it, give us a chance to retire and talk about what they said.

JUDGE MILLER: That is what I had in mind, that is the only thing I was trying to caution them about was, well, I want them to say what they want to say.

JUDGE WILLIAMS: Can you agree which one will tell about the Motion by Red Ball or by Johnson and others rather than have five or six, someone to be the spokesman. Mr. Cross, they keep pointing to you.

MR. CROSS: I think I have been appointed, Your Honor.

JUDGE MILLER: You think you have been elected,

Mr. Cross?

MR. CROSS: Yes, sir.

JUDGE MILLER: Let's proceed then.

MR. CROSS: Let me see if I can put this in the proper context. I think the plaintiffs are moving to supplement the Complaint as the moving parties. It would seem appropriate to me that one of plaintiff's counsel make its' argument in support of their application to supplement the Complaint that the Interstate Commerce Commission will know who - - who no one here can represent to represent the public and let it be heard in response in that Jones, Your Honor, is the carrier or the shippers but the shippers be heard in opposition to the Motion, and then perhaps one of the three intervening defendants, Red Ball, Bowman and Johnson could then elect one of our members to argue on the Motion.

JUDGE MILLER: That would be very good.

MR. SMITH: I have no reluctance to go forward and I will make the presentation on behalf of the Movants, the plaintiffs.

JUDGE MILLER: I would be surprised if you did have any reluctance.

MR. GLANZER: May I be permitted to appear before the

Court in this case? Before we go any further I think it would be very helpful, especially since I was not here at the time of the argument, on the time of temporary Restraining Order, if the Court would please ask the plaintiff to identify which clients they represent in this proceeding and also if we possibly could find out which of the intervening defendants those plaintiffs appear against in the proceedings. I am afraid we just don't know, at least I do not know, and I am having a great deal of difficulty in following the course of this case at this time.

MR. SMITH: Your Honor, I may be able to clear up any confusion Mr. Glanzer has. My name is Don A. Smith of the firm of the Harper, Young & Smith, Fort Smith, Arkansas, and I appear on behalf of all plaintiffs in this action.

JUDGE MILLER: All right, you may proceed.

MR. SMITH: Yes, sir --

JUDGE MILLER: Are you going to confine your talk to the Motions?

MR. SMITH: Yes, sir. Your Honor, the plaintiffs have filed a Motion to supplement the Complaint which was earlier filed in this Court on October 4, 1972. We have submitted to the Court a memorandum

in support of our position to file a Supplemental Complaint that occurs to me, and I will be happy to respond on any arguments that the Court would like to hear me on that this issue boils down to two questions raised by the intervening defendants; One, does this Court have venue for the purpose of entertaining the Supplemental Complaint, and secondly, if allowed to be considered will the Supplemental Complaint create delay in the proceedings that were originally filed on October 4, 1972. I would like to first address myself to the question of venue; as a preliminary statement, I would call the Court's attention that the only defendant in this case, the United States Government and/or the Interstate Commerce Commission has not thusfar challenged the venue in this proceeding. We have only a letter dated July 13, 1973, to make reference to the Government's position, and in that letter signed by Mr. Fritz R. Conn, General Counsel, the Interstate Commerce Commission has made the statemen of course and exhibably related to the issue and whether such relief should be granted by the Three Judge Court is the question as to whether the scope of the litigation should be enlarged as prayed by the Supplemental Complaint, and hence appropriate

for determination by the Three Judge Court; that is the only objection, if you can call that by the Government, so the Government does not raise the question of venue. The question of venue has been raised by what we have referred to as the intervening defendants, Johnson Motor Lines, filed a Motion in opposition last Saturday, I believe it was; Red Ball has not filed anything and Bowman tendered to us.

JUDGE MILLER: Red Ball filed a Complaint, didn't they?

MR. SMITH: I am sorry, it has not been tendered to us if they have and Bowman only filed this morning but I think the significant thing for this Court - - -

JUDGE MILLER: The Red Ball is in it, go ahead.

MR. SMITH: The thing to consider is the fact that none of the parties have questioned venue in this proceeding at any time. All answers of the Government, Red Ball, Bowman, Lochway and Johnson, all admit the venue of this Court. In his opinion in 350-Fed. Sup., page 541, Judge Miller found that this Court has venue under Title 28, U.S.C.A., 1398. That is only these late filed responses that question venue. The plaintiff's response is this;

one, this Court has venue because it has always had venue. The Supplemental Complaint relates to the same occurrence event and proceedings that was the basis for the original action that was filed by Rule 15-D, that is, those matters that have occurred subsequent to the fact the filing of the Complaint that are raised by the Supplemental Complaint; so this Court had jurisdiction, it still has jurisdiction. Now, there have been remarks made in the brief that I think are worthy of consideration and we get rid of those immediately, Johsnon Motor Lines, and that brief is one I am more familiar with because we have had it since Sunday morning. It says that this Court does not have venue because there are no parties plaintiff that have a residence in the Fort Smith District. That is incorrect, Arkansas Best Freight System, INC. and Mercury Motor, both, not only have a residency here, their general offices are here in Fort Smith, Arkansas; they are both plaintiffs in this proceeding. Johnson attempts to carry this one step further, and they say, now, wait just a minute, you can't bring ABF and Mercury Motors in here because they did not protest the Jones application, which is subject of the Supplemental Complaint;

and they cite 28-U.S.C.-A, 1398. Well, I am not content to rely on their evaluations so I would like to read it to the Court; the basis, and this is jurisdiction and venue, is that, excuse me, except as otherwise provided by law any civil action to enforce, suspend, or set aside in whole or in part an Order of Interstate Commerce Commission shall be brought only in the Judicial District wherein is the residence or principal office of any of the parties bringing such action. This does not relate back to the ICC proceeding. It says parties in interest bringing such action and ABF and Mercury Motors brought the action. They were both parties to this proceeding before the Interstate Commerce Commission and if you don't believe me I ask you to refer to 114-MCC, page 770, and referring to Mercury Motors, where it says, "Protest, the Bowman application (also appears) as witness for Gordons in support of Gordon's protest of the Jones, Red Ball and Strickland application."

The decision is attached to the Supplemental Complaint we filed and I believe at page 589, of 117 MCC, you will find that Mercury Motors is listed as a party who testified in oppostion to the Jones application. So I think that the question of venue

is laid to rest, not only in theproceedings before the ICC but in the matter in which this case has been structured. Now, remember, the plaintiffs did not cause any delay, this case was decided in December, 1971, by the Interstate Commerce Commission; and it wrote this report (indicating pamphlet) and in that report it recommended that Red Ball, Bowman and Johnson be given certain authority. In that same report it said Jones should not get any authority. Later after Jones filed for a Petition for ReConsideration, which they are entitled to do, the Commission reconsidered and in December of 1972, it reopened that matter on the entire record and purported to give Jones a grant of authority. On May 29, 1973, the Administrative Order came from the ICC and these plaintiffs immediately prepared and filed their Supplemental Complaint. We did not cause any delay, we filed it as soon as we could have; we could not have raised the Jones matter initially because it was not administratively findings. Now, one of the things that the defendant, and I am using the intervening defendants because the Interstate Commerce Commission has not said anything, one of the things that they have said and they have

emphasized is Jones is different from Red Ball and Bowman and Johnson so you don't need to bring Jones case into the Bowman, Johnson and Red Ball case. Now, that is what they say when they don't want us to file a Supplemental Complaint but when they want to impress this Court by talking about the magnitude of the proceedings they say "and 900 witnesses appeared, part of those witnesses Jones, part of Red Ball, part of them were Johnson," so they want to take the good out of that and they want to leave the bad and say "you consider the bad for the purposes of this Motion." Mr. Riddle, somewhere in this building, has four cartons of materials that constitute the records of this proceedings; and that record is involving all four of these people. It is entertwined. Jones, though they are not a party here, was quoted by the Interstate Commerce Commission at page 589 of the decision in 117-MCC, Jones would not be materially - - would not materially effect these operations and that the grants to Red Ball ,Bowman and Johnson without a grant to Jones, quoting from Jones, "Strikes a death blow to the one of the oldest carriers in the Midwest Central South"; and they come in this Court and tell you they are not

involved and they beg the Interstate Commerce Commission "give us a grant of authority because you have done it to these other three and we've got to be involved"; and now they want to impress on this Court that Jones is out there in the pasture some place out there and is not involved. Now, the question of delay. When we submitted our request to file the Supplemental Complaint we were candid with the Court; we invited the Court to refer to Rule 20-B and Rule 42-a, which gives this Court the right, the power, the descretion and the authority to either hold these matters together or to separate them. We told the Court and we wrote a letter, a carbon copy to the Court and a copy to every one of these defendants, and we said "Your Honor, we are ready to proceed on that Complaint that was filed on October 4; we have submitted all of our briefs as late as July 16, 1973, and we are ready to proceed, just give us a date," and the Court suggested the date of August 13. We are not trying to delay the proceedings, we don't want to delay the proceedings. The Interstate Commerce Commission action in the handling of the Jones case necessitated our filing of the Supplemental Complaint. Now, there have been suggestions and

arguments that "well - - you could file it some place else". That is right, ABF can't file it any place else and Mercury Motors can't file it any place else; but Campbell, Transcon, Time D.C. and Gordon could all file it some place else. Now, what we - what are we going to do when we file it? We are going to tell that Court "look down in Fort Smith, Arkansas, we have got a suit that involves the same parties, involved the same proceedings, has the same record, and we have got jurisdiction down there because of ABF and Mercury Motors but we have decided to come up here or down there, as the case may be, and file this case in your Court"; and that Judge is going to say, "well, when can I get a copy of the record," and we are going to reply to him "just as soon as the Fort Smith Court gets through looking at it and it contains four cartons, they stored it in the basement. The same evidence that was considered by the Commission in 114 MCC was considered in 117 MCC, but you forget 114 MCC because we have got us a separate lawsuit up here". That is preposterous; that is not judicial economy. The same law and the same facts and basically the same arguments are involved and that is whether or not the Interstate Commerce Commission attempted to

grant these four carriers authority on the facts that were before them; whether or not they denied these plaintiffs due process and all of thosematters which we have already briefed; and we are coming to you today and we say we think we are right, we think that the law supports our position to file the Supplemental Complaint. And as I said before I will be glad to answer any other arguments which the Court has that I have not considered in this presentation. I would like to say one other thing; if we reach the point of the filing of the Supplemental Complaint I am prepared today to present to the Court the affidavits in support of the granting of the Temporary Order, Restraining Order against the Commission and in those affidavits you will find affidavits from Arkansas Best Freight System and from Mercury Motors, two of the original plaintiffs in this case, the two plaintiffs upon which venue was originally based, and I will answer your questions.

JUDGE MEHAFFY: I have a question. I noticed in all that list of Intervenows and what not, never mentions Mercury Motors; is Mercury Motors still based here and still in the same posture as far as venue is concerned?

MR. SMITH: No, Your Honor, as a matter of fact, in this proceeding today we have two affidavits - signed by Mr. Montague Williams, who is the Officer of Mercury Motors; we will present those affidavits at the appropriate time. Certainly you can look out the window and you can see their trucks operating every day.

JUDGE MEHAFFY: Your argument is it alone operating here can get venue?

MR. SMITH: Yes, sir, but as to the facts Arkansas Best is here and that gives the Court venue.

JUDGE MEHAFFY: That clears that up.

JUDGE WILLIAMS: May I ask a question; Mr. Smith, wouldn't you be in a better position to argue your position that the action of the ICC was capricious by showing that the ICC voluntarily modified its' Order by asking us to permit you to file additional and supplemental pleadings; why should we let you; we are presented with the question of whether or not the ICC or their Order is capricious; here they have voluntarily set aside the Order in some particulars, why do you want to enlarge the pleadings? Looks to me like it would be to your advantage to say their own actions show that they considered themselves arbitrary and capricious?

MR. SMITH: I think your argument is well taken except we are not in a position to argue the capriciousness of those Orders until we can get them before the Court and the only way we can get them before the Court, since they were introduced in the same proceedings, is to file a Supplemental Complaint and attach them as we have done. We are not, we don't reach the point in our Motions to file Supplemental Complaint of arguing the merits of that decision; we want to do that to show the inconsistency and the overall transaction involving these four intervening defendants and the other applicants that were involved in that proceedings.

JUDGE WILLIAMS: Thank you.

MR. SMITH: Thank you.

JUDGE MILLER: Mr. Glanzer, did you file a document this morning?

MR. GLANZER: No, I did not, Your Honor; I prepared one but I would prefer not to file it because it is incomplete.

JUDGE MILLER: I thought you had filed it. That is what I had thought I had lost.

MR. GLANZER: No, Your Honor.

JUDGE MILLER: I was scratching through these papers for it; all right, go right ahead.

MR. GLANZER: Your Honor, Your Honors, I think we that we should do a little reviewing here; I know Judge Miller is familiar with the facts and background of this case but as Your Honor Judge Mehaffy said earlier, you had not had the opportunity to familiarize himself with this record. I think we should go back a bit and start in the year 1964 when an application was filed by a Carrier named Roadway, which is here in this Court as the plaintiff. That application sought to open up a traffic between the Southeast and the Southwest, the Southwestern States of the United States, and that triggered a whole series of about 19 or 20 applications filed by many carriers who had headquarters and operations either in the southeast or southwest seeking to bridge that gap. The Commission was confronted with a very difficult choice, whether to let each of those applications proceed separately or whether to consolidate the applications for a hearing on a single lectern though maintaining the separate integrity of each of those applications and as individual cases. A prehearing conference was held and as a result of the prehearing conference ten of those applications were selected for consolidation. That case took an awfully long time to try and to be

decided before the Commission.

JUDGE MILLER: May I ask a question, please?

MR. GLANZER: Yes, sir.

JUDGE MILLER: At that conference when you reduced that number from the 19 or 20 to 10, what happened to those others you did not include in the lawsuit?

MR. GLANZER: I can give a partial answer to the best of my recollection; some of those proceeded independently. Among those applications are some of the plaintiffs in this courtroom; several of those applications were granted long ago; several may have been denied; others may have not prosecuted those applications. I believe Mr. Cross may have a record of each of those applications here in this court room and he may be better prepared to reply than I. And they may be in his brief.

JUDGE MILLER: I think it is in the brief but the question just occurred to me.

MR. GLANZER: May I proceed, Your Honor?

JUDGE MILLER: Yes.

MR. GLANZER: Well, as the Commission says in its' report in the case which came to be known before the Commission as the Herron case because in the reports of the Commission it was the lead application. The Commission said, after this hearing was

over and after the examiners report came in and examined the petition - - - I am sorry exceptions were filed to these reports, many briefs were filed and the matter came before the Commission and the Commission in its' report in the Herron case said, "this has been by far the most extensive Motor Carrier proceeding ever before the Commission," and it was. There are over 23,000 pages of transcript of testimony. There are nearly 2000 lengthy exhibits in the case; and the pleadings filed by the various parties, the ten applicants plus the sixty-six protestants, some of whom it so happened were also applicants protesting some of the other applicants in the case. Your Honor, I don't think it is any exaggeration to say that the pleadings alone would stretch from just about one end of the Clerk's quarters over here to the end of this table (indicating); I know Judge Miller has had an opportunity to see some of these things; it is lengthy and required a lot of work on the part of the Commission to decide this case. There were delicate transportations issues involved and the Commission did finally decide this case, as Judge Miller has pointed out, in December of 1971 by a Three Member Division constituted by a Statute and that Three Member

Division decided that there should be a grant on a comparative basis to three of the applicants in the proceedings. One of the applicants, Roadway, fell by the wayside of its' own accord; it achieved what it wanted in another way. Another carrier chose not to file exceptions but was carried along in the case anyhow, however, its' applications was denied. That applicant is not here in this court room. That left eight of that eight. The Commission comparatively on the basis set forth in its' decision granted the application of Red Ball, Bowman and Johnson; however, under the Commissions practice that deeision didn't become final until petitions for reconsideration filed by the parties could be decided. That petition or those petitions for reconsideration were not decided until the fall of 1972 by a Commission decision of December 1, 1972. It was then that the case became administratively final and ripe for judicial review or for the filing of the Complaint fudicial review before any Court in which any plaintiff, in which any party adversely affected by the result, resided or had a principal place of business. However, also in accordance with the Commissions practice, petitiors for a finding of general transportation importance, something like

a petition, filed with an Appellate Court seekings - seeking a rehearing on back were filed. This did not affect the administrative finality of the case before the Commission. If denied --

JUDGE MILLER: I looked and looked and I could never find anything where any Court had ever commented on that kind of a Motion. I figured out what it meant myself, that is to me. I may be wrong, that wanting them to proceed as a general transportation problem; that was because of the enormity of the whole proceeding, wasn't it, and so many people involved and so many systems being involved, is that the basis for that motion?

MR. GLANZER: I think that generally summarizes what the parties who filed that petition thought, yes, Your Honor.

JUDGE MILLER: That is what I thought; had that Motion been granted would that have affected the decision by the Commission?

MR. GLANZER: Had the Motion been granted, Your Honor, it would have been the same as I tried to analogize as if a Court of Appeals had said, "allright, instead of Three Judge Panel to decide the case we will now have, if it is a nine Judge Court of Appeals, Nine Judges will set.

JUDGE MILLER: Would it have been submitted to the eleven Commissioners?

MR. GLANZER: It would have been submitted to -- if the Commission was fully constituted, to the eleven Commissioners.

JUDGE MILLER: If the Commission had its' full membership it would have been submitted to the full Commission rather than to a Division 1?

MR. GLANZER: Yes, Your Honor, but the Motion -- that is the Petition, as we call it, a Motion was of course under the Commission's rules submitted to all of the sitting members of the Commission for individual election and for individual vote as to whether or not to grant the Petition.

JUDGE MILLER: All right.

MR. GLANZER: And --

JUDGE MILLER: That explains it.

MR. GLANZER: I can understand whyYour Honor did not figure it out I did not think it was enough of importance to refer to it in the brief, however, I think it should be very carefully mentioned that the majority of the Commission who voted on the case voted against granting the Petition for general transportation importance but I am ahead of myself now, Your Honor. I would like to go back.

JUDGE MILLER: I am sorry.

MR. GLANZER: The point that I do want to make before Igo back is this, if this vote is not as one might imply for himself in reading the various pleadings and papers filed by the plaintiff in this case, the vote is not secret by Statute by Section 17 (3) of the Interstate Commerce Act, anyone seeking to learn the nature of a Commissioner's vote or any matter need only pick up the telephone and call the Secretary's Office at the Interstate Commerce Commission and say, "how did the Commission vote individually on my petition"? And they will be told by Statute.

JUDGE MILLER: I had no thought about that; the only thing I did try to find out what that meant but I can understand now --- those fellows just met and read the record and says, "Oh, well, let the Commission decide, let Division I decide it."

MR. GLANZER: As Your Honor knows I am sure Division I is statutorially empowered to decide these cases.

JUDGE MILLER: I understand that,allright.

MR. GLANZER: I come back to, just before the Petition for General Transportation importance, as Mr. Smith pointed out correctly, in the Commission's Order

denying the Petition for reconsideration in connection with the Red Ball, Johnson and Bowman applications. The Commission, however, did grant Jones Petition for reconsideration and reopened the Jones Proceedings. Thereafter, the Petition for reconsideration was filed and immediately thereafter, before waiting for the result of that Petition to come down the plaintiffs instituted this Court action and refer to the filing of the Petition for general transportation importance in their Complaint. I am going to jump ahead for a moment and say that one of the things that plaintiffs say entitles them to a joinder or to supplement their Complaint is the fact that they did not note in their Complaint that the Petition for general transportation importance was denied by the Commission. However, that information has been before this Court by virtue of the defendants answer to the Complaint in which we have heard that fact so that is not new to this Court; this Court has known this for many months. We go back; as Your Honor recalls the applications were made for a temporary restraining Order. I was not here but I read Your Honor's decision granting the Temporary Restraining Order.

Thereafter in December, thereafter the Commission decided Jones - - - Jones' petitioned for reconsideration and in a written opinion the Commission granted the Jones application but whereas they granted the Red Ball, Johnson and Bowman applications on a comparative basis the Commission here very carefully distinguished and said "we are not granting this application of Jones on a comparative basis, we are granting it because we have not given authority to these others, this is something separate within this proceeding" and they made that point at page 594 of their decision, which appears at 117 MCC, beginning at 586. Now, they made that quite clear, this was not handled, although on the same record and on the same record in the same general consolidated proceeding, the basis for the grant was entirely different, although there was some overlapping of necessity in order to permit Jones to serve the points, the separate points that it was given the authority to serve.

JUDGE WILLIAMS: I don't want to break your chain of thought but didn't that constitute an amendment, the Order, while this case was pending?

MR. GLANZER: No, Your Honor, it did not; you see

that was not the final Order for Jones. The answer is "No, it is not an amendment of the Order which this Complaint attacks". The attempt of the Supplemental Complaint is to attack an entirely different Order in a different docket, because the Jones case got separated out at this point.

JUDGE MILLER: That is, well, yes, that is right, I understand. I wish you would call my attention, I read that about the reasons given by the Commission in granting the Jones application, I remember something about what you said there but my little mind just wont hold everything like it should, or like some of you gentlemen --

MR. GLANZER: If you wish, Your Honor --

JUDGE MILLER: Give me that page number?

MR. GLANZER: It was 117 MCC, beginning at 586, the case citation is 117 MCC, the page number, specifically is 594, however, there is a slight introduction on page 593, if Your Honor will permit me and if Your Honor will wish it I will read it to the Court.

JUDGE MILLER: I think it is an important point.

MR. GLANZER: All right, Your Honor, under the heading on page 593 of "Discussions and Conclusions

in the Jones case;" the Commission said, "It was determined in the prior report, that is the report at 114 MCC giving the Commission's reasons for the grant that Johnson, Bowman and Red Ball, it was determined in the prior report as noted above that the record presents substantial evidence of a prevading public satisfaction with the available transportation services (largely joint line in nature) from, to and between the areas here under consideration as well as of a rapidly increasing demand and need therein for additional direct single line Motor Common Carrier Service. It was concluded that the volume of traffic shown to be moving would not sustain the added services and operations proposed by all eight applicants and the granting of the applications of all remaining applicants" could lead to unhealthy if not cut throat competition inimical to the public interest."

MR. GLANZER CONTINUES:

The Commission went on and said, "These conclusions in our judgment have not been shown to be in error and are fully supported by the substantial evidence", but as Jones submits, while it was concluded that the supporting shippers had shown a need for service, the prior report fails to grant sufficient authority to assure that numerous shippers in Arkansas, Kansas, Missouri and Oklahoma and a number of shippers located elsewhere which have traffic moving from or to points in these states will be able to obtain the responsive single-line motor carrier service for which they have shown a need.

Neither the successful applicants inherit this, Red Ball, Johnson or Bowman nor the others, Herring and Strickland, would be able to serve a number of the supporting shippers located in the above described four-state area or a number of points therein from or to which traffic has been shown to be moving. Of the applicants, only Jones now holds the authority necessary to insure that the supporting shippers either located therein.

JUDGE MILLER: That's in these four states?

MR. GLANZER: Yes, Your Honor, or having traffic

moving to or from this area will be able to obtain the required single-line service.

The only shortcomings in the prior report, therefore, are the failure to recognize this essential fact and to grant Jones authority to serve between points in the four-state area on the one hand, and the other, Atlanta and Birmingham.

There is another paragraph that deals with this, but I think that Your Honor will allow me to go down here and read this sentence towards the end of the paragraph saying, "For the most part the service authorized herein will not needlessly duplicate that authority already granted in Herring and we do not believe that this grant will result in a healthy competition amicable to the public interest. Additionally, safeguards will be taken as more fully described below in order to avoid granting more authority than the pertinent service according to shippers they show they require." They conditioned this grant to make sure that to the extent practical and possible that the Jones grant was not a comparative grant as were the previous grants which are the subject of the order which in turn is the subject of the initial complaint filed in this action.

JUDGE WILLIAMS: What is the date of that? Jones?

MR. GLANZER: This was decided on December 6, 1972, Your Honor, and in accordance with the Commission's practice, was served on December 18, 1972.

Now, as was the case in regard to the previous order involving the other three carriers' petitions for reconsideration of this grant or this report and order were filed and it was not until May 29 that the petitions for reconsideration were decided.

JUDGE MILLER: The real heart of this Jones application that really aroused these, Johnson and others, was the provision with reference to service between Atlanta and Birmingham and down in that particular area, wasn't it? In the last Jones order?

MR. GLANZER: The complaint of the plaintiffs in this case?

JUDGE MILLER: Yes.

MR. GLANZER: I honestly do not know, Your Honor. I don't know what the plaintiffs are complaining about in this case and this is why I asked the question at the outset which counsel represents which party in this proceeding and what are they complaining about individually in the grants, in

the various grants, in the various dockets issued by the Commission. I am completely at a loss at this moment.

JUDGE MILLER: It'd be a lifetime job trying to figure out what each one is complaining about when you take the whole record, but it seems to me like you take the one that serves the Atlantic Seaboard - that's Johnson, isn't it - It is vitally concerned with the effect of this order of Jones in favor of Jones opening up or changing some of the authority between those points from Atlanta to Birmingham or down in that area.

MR. GLANZER: No, sir, that is not so, Your Honor. I think perhaps Your Honor is referring to someone else. Johnson is an intervening defendant. Jones is not in the case at this point nor have they filed anything to get in the case. Johnson is not a plaintiff in any way.

JUDGE MILLER: No, he's not -- I was not inferring that, but I meant that was the objections.

MR. WIGGER: No, Johnson is not objecting to anything Jones has received. Johnson sits on this side of the table.

JUDGE MILLER: Who is except named plaintiffs?

MR. GLANZER: I don't know, and that's one of the things I want to come to here.

JUDGE MILLER: Go right ahead.

JUDGE MEHAFFY: Let's go 'way back then. Just how did the second order of the I.C.C. adversely affect anybody? Now, let me state it another way. When you go to the root of this matter in the original order, how far could Jones go in that direction?

MR. WIGGER: I think Jones will have to tell you himself, Your Honor. The reason for that, the reason for that is this is a terribly complex geographical situation. Jones -- But perhaps I can explain it this way. I think perhaps Judge Miller has given me an assist on this, something I have neglected to mention. I said in my brief there is a kind of breakdown in the ten applications that were filed with the Commission.

Roadway sought to go from a southeastern point straight south to Pensacola, Florida, across from Pensacola to New Orleans, then up to Baton Rouge. Now, Roadway was a special situation. They were the only ones here, as I recall, that had authority both in the southeast and the southwest at that time and this was kind of a little

fill-in. But afterwards we had a lot of southwestern carriers saying, "Hey, we have a real stake in traffic now between the southwest and the southeast". These two economically dependent areas are beginning to generate an awful lot of traffic and more motor carrier service is necessary to fill that need so a group of southwestern carriers filed applications and at the same time the southeastern carriers, not to be outdone, said, "Well, if the southwestern carriers want to come east, then we want to go west and we want to fill the gap for the needs of our customers." In addition also, of course, there was the other traffic that was coming in from the northeast to the southwest or the southeast and also from southwest through the southeast up into the northeast and the north.

Now, after the Commission decided on May 29 to deny the petitions for reconsideration and grant the Jones authority, that denial made the Jones case administratively filed and eligible for filing in the court.

There was a petition for general transportation importance filed by the people who sit here on my left and some others and the petition filed for general transportation importance

was denied by the Commission unanimously.

Well, I have come to the point where I said that the disappointed protestants in the Jones case could come to court to seek judicial review. However, who are the disappointed protestants in the Jones case. Well, we have to start with the, I think, Appendix Three to my brief in which I show or try to show the line-up of the plaintiffs versus the applicant in the proceedings before the Commission, and if the Court will look the Court will see that Arkansas Best Freight did not protest the Jones application. They had no interest in it. They can't be aggrieved now; if they say they are then they certainly have not exhausted their administrative remedies before the Commission.

Mercury Motors, Incorporated of Fort Smith, they were not a protestant to the Jones application.

Those are the only two plaintiffs which have a residence or principal place of business --

JUDGE MILLER: I don't want to be constantly interferring but the petition that Jones filed for reconsideration, did Jones undertake

to separate, reach in to this large case, reach in and take its application out of the Herring case that was covered earlier and re-install it as a separate docket?

MR. WIGGER: It was never other than a separate docket.

JUDGE MILLER: I know it was always a separate docket but -- that is true, but, in other words, he says, "Let's just separate this from this consolidation". Is that in effect what they said?

MR. WIGGER: I think what they said, according to what I just read to the Court, Jones felt that it was restricted by the comparative consideration of all the other applicants and wanted the Commission to decide its case on its own special facts and the Commission did, said that it did.

JUDGE MILLER: All right.

MR. WIGGER: I'm sorry.

JUDGE MILLER: That's all right. Go right ahead.

MR. WIGGER: We have heard from Mr. Smith that well, maybe Mercury Motors might stand in a different category if they came before the Commission as a witness in support of another protestant against the Jones application. That

is true, but I think the circumstances of that might be of interest to Your Honors and I think I should read all of this to the Court as it is very fascinating. This is most fascinating, Your Honor, in regard to Mercury Motors and its opposition to the Jones case. Now, I think it will show -- What I'm leading up to here is telling Your Honors that the Government and the Interstate Commerce Commission are not going to waive the venue and jurisdictional requirements of 28 U.S.C. 1398 insofar as the attack upon the Jones order is concerned.

I would like to read, Your Honors, with your permissions, from the direct examination at this point and also some of the cross examination of the witness who appeared for Mercury Motors at this proceeding, at page 20,284 of the transcript. Dennis Cormack was sworn, questioned by Mr. Stevens: "Give us your name and business address, please." Answer, "Dennis Carmack, Mercury Motors, Inc., 1022 South "Y" Street, Fort Smith, Arkansas." Question: "Mr. Carmack, have you prepared certain material for presentation in this proceeding?" Answer: "I have." Mr. Stevens interjecting at this point: "Before

proceeding, Mr. Examiner, I believe I am correct that this record does not at this point reflect an appearance on behalf of Mercury Motors, Inc. as a protestant and at this point I would like to enter an appearance on behalf of this company as a protestant in the Bowman case only. It is my understanding that timely protest was filed." Examiner Jessup: "Protest - timely protest was filed?" MR. STEVENS: "That was my understanding. I would like to ask the witness if he could supply the date of that protest." WITNESS: "I can. Mr. Bishop. Mr. Bishop represented Bowman before the Commission and also in this Courtroom." MR. BISHOP: "We meant no point that they did not." Examiner Jessup: "All right. The protest is limited to the Bowman application." MR. Stevens: "That is correct". And the witness -- I'm on 20,285 now -- "That is correct", and the witness is presented in support of his protest of the Bowman case.

I would like to have marked for identification a one-page statement setting forth certain information concerning Mercury Motors. Examiner Jessup: "Sixteen Hundred", and it was marked. There is some colloquy here and a question

and answer and then Mr. Stevens goes on. "Mr. Examiner, I have made an error that I would like to correct at this point. This witness is appearing solely as a protestant in the Bowman case but this witness is also offered in support of the protest of Gordon's Transport in other cases and I neglected to explain that. The cases that Gordon's offers the witness in will be the Jones, Red Ball and Strickland." We now go to page 20,360, and Mr. Bishop has concluded his cross examination and Mr. Blair who represented Jones begins his cross examination, and he says, "Mr. Carmack, when did you prepare Exhibit 1600?" "Approximately a week ago" was the answer, and the question: "And I take it at the time you prepared it that you had not decided to appear as a witness for Gordon's against the Jones application?" Answer: "That is correct. Question: "Or you would have put it in the statement?" Answer: "That is correct." Question: "Would you mind telling me when you decided to be a witness for Gordon's in support of Gordon's and their protest of the Jones application?" And the answer, "It was announced here at 9:30 this morning." Question: "And that is when you decided, is that correct?" Answer: "Yes, sir".

Question: "All right. NOw, what do you understand that you're helping Gordon's protest in regard to the Jones application?" Answer: "Sir --" Mr. Stevens: "I object. If he wants to state what he understands what the Jones application is, it's up to whether he's going to help us or hurt us". MR. BLAIR: "All right, Mr. Examiner. There have been statements distributed by Gordon's which presumably Gordon's is going to put in evidence which delineates their interest in regards to the Jones application because in spite of my objections we took the supporting witnesses before we got that statement in. I don't have it in the record but everybody has got it and it clearly delineates the Gordon's interest in the Jones application and it's not the entire Jones application, and the objection does not make sense" and the Examiner: "You may be a little too technical, Mr. Blair. We're going to overrule that objection and proceed, nevertheless."

And the question, by Mr. Blair: "Can you answer the question then? What do you understand that you are helping Gordon's in regards to the Jones application?" And the answer, "I don't know."

That is the extent throughout this proceeding how the interest of Mercury Motors, Your Honors. One of the reasons why I want to know who is representing who here is I would like to know who is representing Mercury Motors because they never filed, as near as I can find out, and I looked through every pleading in the Commission's docket. I do not find a single statement subsequent to this event of Mercury Motors' interest in this case. Their name does not appear in regard to any pleading that I can find out, and I don't know who' represents them at this point in time. I assume Mr. Stevens, but I'm not sure, because they never once dignified this proceeding by ever again appearing before this Commission in this long, complicated, voluminous case.

That is why the Government at this point must point out that there is no venue plaintiff in this action that was commenced last year who has any interest in the Jones grant.

JUDGE MILLER: Is that a convenient place for you to stop, where we could have a recess for a few moments?

MR. WIGGERS: Yes, sir. I'd like to go on to something separate at this time.

JUDGE MILLER: All right.

JUDGE MEHAFFY: Court will stand in recess five minutes.

MARSHAL: Court will stand in recess for five minutes.

JUDGE MILLER: I'd like to have about ten.

MARSHAL: Court will stand in recess for ten minutes.

RECESS

11:15 a.m.

MARSHAL: Everyone will rise. Court resumes in session. You may be seated.

JUDGE MEHAFFY: You may proceed.

MR. WIGGERS: Your Honors, may I interrupt myself at this point and say I am about to go into something else, at least I would like to at this point. However, is there anything in what I have said so far that Your Honors have any concern or any additional questions that you might ask me at this time before going to the rest of it, the rest of the presentation?

JUDGE MILLER: As far as I'm concerned, I don't know how you could enlighten us any further on those questions, but that does not remove the confusion within my mind. You would perform a miracle if you did that.

JUDGE MEHAFFY: All I can say is, let's get along with this. We have others to hear from and pretty soon the day will be gone.

MR. WIGGERS: Your Honor, Judge Miller has indicated that this motion of plaintiffs is a matter committed to the discretion of this court, and addressing myself to that discretion I would like Your Honors to be aware of what the United

States Supreme Court said in 1948 - sorry, 1949, case of United States versus Interstate Commerce Commission, at 337 U.S. 426.

JUDGE MILLER: What's the name of the case?

MR. WIGGER: United States versus Interstate Commerce Commission.

JUDGE MILLER: All right.

MR. WIGGERS: At page 442 they refer to the Urgent Deficiencies Act which Your Honors know is the popular name of the Act which grants the right of judicial review in a statutory three-judge court of decisions of the Interstate Commerce Commission. And the Court emphasized at that time that the Urgent Deficiencies Act of 1913 abolished the Commerce Court and transferred its jurisdiction to District Courts composed of three judges. In considering this Act, Congress was urged to bear in mind the necessity for providing a forum that could expeditiously review Commission orders of widespread importance and they comment again later on that the Urgent Deficiencies Act envisaged and was designed to obtain an accelerated judicial review procedure.

I urge upon Your Honors that if the motion to supplement the complaint is granted it

means that the order under attack since last fall in which a temporary restraining order was issued staying the operation of the Commission's order granting authority to three carriers to serve the public will be delayed still further because this action against Jones cannot possibly become ripe for judicial review and disposition for another five months at least because it will require that much time for the briefing just as it required almost eight months for the briefing of the case that is already before the Court that is ripe for argument and disposition because all the briefs are in, as Judge Miller said, I don't know what else can be said about the Commission's order granting the authority to Red Ball, Johnson and Bowman by the parties in this case.

We feel that if the motion is granted there will be prejudicial delay in the determination by this court of the order granting authority to Red Ball, Johnson and Bowman.

GE MILLER: I'd like to ask a question right there. I am fairly familiar with what you're talking about, the delay and so forth and so on. Now, Jones is not at this time before this court. I mean, the order that has brought,

necessitated the filing or the ultimate filing of the supplemental complaint. Now, suppose we overrule the the motion and refuse to let them file a supplemental complaint. We go ahead. Then what would be before us would be whether the validity of the three orders of Johnson, Red Ball and Bowman -- that's right, isn't it?

MR. WIGGERS: (Shakes head in affirmative).

JUDGE MILLER: Now, we act on those. Now, where does that leave these people that are protesting the Jones part of it?

It may be -- Well, I don't know.

MR. WIGGERS: It does not leave them without remedy in the court, Your Honor. They have every right under the statute that they had before. Those who are parties interested in the event have a forum to air their grievance under the statute.

JUDGE MILLER: The only thing, until the suit was instituted by those people and the court had an opportunity to consider whether or not to suspend the operation of the Jones order, he could go -- he could go right into business, couldn't he?

MR. WIGGERS: Yes, Your Honor, if the stay of the

type that was issued by Your Honor against the initial order in this case which prevented the operation of the Order only, that is, prevented the parties from conducting operations under the grant.

JUDGE MILLER: The three.

MR. WIGGERS: The three.

JUDGE MILLER: Jones would have no restraint until some other proceeding was instituted.

MR. WIGGERS: Yes, and Your Honor, as Judge Findley has said, I am sure that one of the plaintiffs or one of the parties who is aggrieved will win the race to some forum and they will be able to bring their action, present their complaint for the grievance to a United States District Judge who will be able to act in the premises, and you know, Your Honor, that is exactly what some of the plaintiffs in this courtroom said before the Commission when they filed their petitions for reconsideration of the Jones grant.

For example, as the Commission's order of May 29.

JUDGE MILLER: Who was it filed the motion for reconsideration of the order, entering the order in favor of Jones?

MR. WIGGERS: All right, Your Honor. The order shows the following. It was a joint petition of Mercury Freight Lines, Inc. and East Texas Motor Freight Lines. They filed theirs on January 17, 1973, for reconsideration. There was a joint petition filed by Transcon Lines and Time D-C on January 17, '73, for reconsideration. There was a joint petition of Roadway Express, Inc. and Roadway Express, Inc. of Mississippi filed January 17 for reconsideration.

Now, the petition, the joint petition of Campbell 66 Express, Inc., Gordon's Transports, Inc. and Red Lion Transfer and Storage Company, Inc. filed January 19, 1973, for reconsideration embraced a request that the Commission hold this proceeding, meanimg the Jones proceeding, in abeyance until this court decided the case against the three carriers, Red Ball, Johnson and Bowman. They were able to separate it in their minds then, but now --

JUDGE MILLER: I did not see those petitions. I guess, of course, it's in the record, the whole record. I kinda shied away from that whole record. I can't lift those heavy objects any more. That bothered me a little bit.

JUDGE WILLIAMS: Let me ask a question. Do you care

to comment jurisdictionally what status the Jones petition is in when it was granted by the Interstate Commerce Commission in December of '72, three months after this court entered a temporary injunction presumably to have everything in status quo?

MR. WIGGERS: Yes, Your Honor. I can see Your Honor may believe that Judge Miller stayed the Commission's action with regard to Jones. I did not read the temporary restraining order to indicate that.

JUDGE WILLIAMS: Does it place this court in the attitude of trying to review a constantly changing order that if the Commission keeps making amendments and changes and one thing and another, does it put it in the attitude of trying to review an order which is not stable and that the Interstate Commerce Commission can change if itwants to?

MR. WIGGERS: I don't know if I completely understand your question. It is correct to say that the Interstate Commerce Commission's orders until final and in this case final would be the issuance of the certificate filed with the Commission for proper cause to take back an Order. I do not think that is reall what is involved here.

JUDGE WILLIAMS: We're talking about two different things. We recognize that this is a field in which the Interstate Commerce Commission has the expertise and the exclusive right. We only review within the limits, but when we are trying to review it, are we placed in the position that the Interstate Commerce Commission can change it, modify it, while we're trying to review it?

MR. WIGGERS: I don't think so, Your Honor. As I understand Judge Miller's order --

JUDGE WILLIAMS: Isn't that what has occurred in this case?

MR. WIGGERS: No, sir, I don't think so, Your Honor. I think Judge Miller's order as I recall it and I don't have a copy in front of me, did not go to Jones at all, did not go to the Commission's reconsideration nor was he requested to issue a T.R.O. in regard to the Jones aspect of the case.

I think all parties at that time considered Jones to be a separate proceeding and it was not made the subject of the application for a T.R.O. The Commission was not instructed by Judge Miller not to proceed to review the Jones

case. There is just no restraint upon the Commission from carrying out its statutory duty to review an application filed by -- filed by the applicant Jones. I am indebted to counsel here who has given me a copy of the decision of Judge Miller on the temporary restraining order in which it appears at the end the following language. "Therefore -- and this is 350 F.Supp. 547 - I'm sorry, 350 F. Supp. at page 547, "Therefore, an order is being entered today restraining the I.C.C. from implementing any orders herein complained of", and the order that was complained of was the granting of authority and not the granting of reconsideration to Jones.

JUDGE WILLIAMS: I was not carrying a brief for either side, just wanted comments on it.

MR. WIGGERS: We view any further delay in the decision on the original complaint attacking a single order of the Commission granting the authority of Red Ball, Johnson and Bowman to be prejudicial to the public interest. We think that that should be decided and should not be held in abeyance, particularly because there is this eight month old temporary restraining order which should, since the briefs have been before

the Court, it is in a proper posture for final action by this Court. We think that should be handled at this stage and that the Court should not encumber this case with an entirely separate order of the Interstate Commerce Commission.

I am not going to here try to characterize the action of the plaintiffs in seeking a supplemental complaint in this proceeding.

JUDGE MILLER: Do you have a copy of those motions that you read there, motions for reconsideration filed by those people that you read a while ago?

MR. WIGGERS: No, Your Honor, although I have with me -- All that I have -- Well, of course, it's in the record downstairs.

JUDGE MILLER: I know it's in the record but --

MR. WIGGERS: No, this would not even be in the record. This has not yet been submitted by plaintiffs unless it's attached to their moving papers because this just relates to the Jones case. If Your Honors wish a copy of this order I can give you my copy here. I have interlined certain things.

JUDGE MILLER: I meant those petitions for the review of, or to ask the Commission to reconsider the granting of the Jones order.

MR. WIGGER: No, Your Honor, but I am sure that plaintiff's - one of plaintiffs' counsel probably would have a copy of his petition here in this Courtroom.

JUDGE MILLER: Probably. It had not been called to my attention. As I say, I have stayed away from that huge four boxes down there as much as I could.

MR. WIGGER: Your Honors, I'd like to close in this way by referring to the dissent of Justice Fordyce referred to by Judge Findley in the case of Baltimore and Ohio Railroad Company versus United States, 386 U.S. 372, 472, 1967 decision, and Judge Fordyce, with much perception said, "The history of the I.C.C. Proceedings is a source book for dilatory tactics and a monument to the successful burial of good projects by over-elaborate procedures manipulated by experts in the art." We feel that whatever may be the motivation, the result will be unfortunate delay and since we, the Interstate Commerce Commission, represent no party in this proceeding but the public interest, we feel that the public interest should be considered in the exercise of the Court's discretion.

JUDGL MEHAFFY: All right.

BY MR. JAMES W. BLAIR: With permission of the Court, I appear for 66 shippers who are intervening, asking they be allowed to oppose the granting of the supplemental complaint who sign themselves Daisy Manufacturing Company, et al.

I think I can answer some of the Courts questions that other people cannot because I am one of two lawyers who was at every day of this hearing from the opening hearing conference to the day oral testimony began to the day it closed.

The plaintiffs refer in their reply brief to the fact that certain briefs were prepared by counsel who took no part in the hearing. I appreciate Mr. Smith was not at that hearing and may well not have understood how that hearing was conducted. It was a consolidated record but the dockets were kept separate. The lawyers entered their appearance in the individual dockets as protestants to individual cases. For example, when Mr. Smith's client, Arkansas Best Motor Freight took the stand and testified in the consolidated haring, I was not allowed to cross examine him. The reason I was not allowed to

cross examine him because they were not in my docket. They were not a protestant to my case nor was I allowed to cross examine Alamo or Red Arrow Freight Lines or many of the other plaintiffs in the original case here who were not in my case.

An example of how far this went is Wentworth Griffin, the gentleman in the blue suit, entered an appearance for a protestant, Time D-C, who protested the Jones application, but because he did not enter his own appearance in the Jones docket he was not allowed to cross examine witnesses who appeared solely in testimony of the Jones case, so that although this case was conducted on a consolidated record there was never a misunderstanding on the part of anybody that the cases were separate cases.

Now, when the order came out granting Johnson, Bowman and Red Ball and the case became administratively final, their case could be taken to court. The order also denied four other applications and their cases could have been taken to court by them. The Jones case was kept alive. It was reopened. It did not become administratively final. Now, if this

case had already been decided today, if this case had not drug on -- I would not say drug on because I know how long it takes to brief the case -- but this case was filed in this court some eight or nine months ago. If it had already been decided there is no way that I - not I but Jones Truck Lines certificate, there's no way that the Interstate Commerce Commission of the United States of America could be sued to enjoin the Jones certificate in this court because there would be no venue because there is no party in interest who is a protestant to the Jones case who even begins to exhaust his administrative remedies who has his principal place of business in the State of Arkansas, and in my opinion representing sixty-some-odd shippers that I represent, the basic purpose of this motion is to further delay the Jones certificate and these other certificates that have already been delayed eight years. It's been a masterpiece of delay.

Now, if Jones were brought into this case I think the Court would want to give Jones a fair trial. It took something over a year to brief this case the first time it was

ever briefed. It has taken several months any time anybody has ever tried to brief it. I once locked myself up for 30 days and abstracted the record for 18 hours a day and only got a third of the record abstracted. I believe the court would be obligated to give Jones ample opportunity to brief this case and I don't think the court could be persuaded it would not take months because it would take months.

I think the Court may not appreciate also that territorially the Jones case in the way the grant came out was even more effectively severed in interest from the rest of these cases. All of these cases originally revolved about an axis of Atlanta, Georgia and Dallas, Texas and traffic between those two towns. Collaterally, also Birmingham and Dallas, Texas and Birmingham and Atlanta. The Jones certificate as proposed to be issued is restricted against handling traffic between Atlanta and Birmingham or between Atlanta and Birmingham on the other and Dallas, Texas.

Now, Judge Williams, you asked counsel for the Government a question that I think shows somewhere that someone has confused you about

that Order of May 29th. What happened was that the Jones order was re-opened; our case was re-opened on my filing a petition for reconsideration on behalf of Jones. The Commission then granted in December 6 a Jones grant but restricted it against the Dallas, Texas traffic on the one hand and Atlanta and Birmingham on the other.

Six or seven plaintiffs, none of them Arkansas companies that filed petitions for reconsideration to the grant of the Jones case raised as one of their questions in the Jones grant, you restricted them against Dallas on one hand and Atlanta and Birmingham on the other but you did not say anything about the commercial zones, so that means that they could go out to Arlington which is in the Dallas commercial zone, and they could handle traffic from Arlington to Buckhead which is in the Atlanta commercial zone. Well, when the Commission issued its order of May 29th, I don't know as I would say they voluntarily changed it, Your Honor. They went ahead -- In that order what they were doing was denying the petition for reconsideration, but when they denied those petitions they spelled out that Jones would also be restricted against handling

traffic from Dallas commercial zones to Atlanta and Birmingham commercial zones and vice versa.

Now, Judge Miller asked the question about the Johnson authority. The Jones authority is granted and Johnson authority as granted do not come into play, any kind of interplay at all that I can see because what Jones is primarily left with is authority from the points it has authority to serve in Missouri, Kansas, Arkansas, Oklahoma to Atlanta and Birmingham which are points it did not have authority to serve, and it would also pick up for the first time points on U. S. 82 of Texarkana, Crossett, Magnolia -- I don't remember all of them, Strong, a little town which it does not have the authority now to serve.

Now, the Jones case differed greatly from the other cases in that the other cases were concerned to a great extent with time in transit. How long did it take to move a shipment. A lot of the Jones case was made on cross examination when Jones got the operating witnesses of Time D-C and Transcon and Campbell and Gordon to admit on the witness stand that their company was not serving certain towns at all

that it had authority to serve, and I have attached as an appendix to my brief references in the transcript to the fact that they were not serving these towns at all or they were not handling certain types of traffic at all. It was not a matter of how long. There was no service whatsoever.

Now, the Commission in its reconsideration recognized that none of these other applications would meet that situation up here in the hills of Arkansas and the hills of Oklahoma and the hills of Missouri and to allow these people to come in at this point and further delay the Jones certificate and assuming they make an argument for T.R. I don't see how they can make the same argument for T.R. they made against these other certificates because its not revenue they would lose because they're not handling the traffic anyway. It would seem to me that you would drag in a lot of new issues in a case that has already been briefed. You would further confuse something that has bothered my mind for eight years anyhow, and so I would submit on behalf of the supporting shippers that to allow the supplemental complaint would delay all

these cases unduly and it would allow the plaintiffs to seek a forum which they otherwise could not seek. It would do one other thing. As I understand, and I've not heard them address themselves to it, the plaintiffs seem to be all attacking the Jones certificate. I could not believe that when I saw it because a number of them had at various times for various reasons said "We will not protest this Jones certificate" and to find Alamo and Red Arrow and Central signing a pleading saying they were opposing the Jones certificate bobbled my mind and I called Jones Truck Lines and said "You all may not be able to believe this", and they said they could not either, and so Mr. Wiseman who is in this room called Central and Alama and Red Arrow and Eagle and said, "Have you all authorized anybody to appear against the Jones certificate?" And they said, "No, we have not. We never opposed it. We do not now oppose it."

One of the plaintiffs who exhausted their administrative remedies and who would be entitled to oppose it, Red Lion Transfer and Storage Company, said "We have instructed our counsel not to go forward against the Jones

certificate", so I don't know who my enemies are. I am at a loss here to find which plaintiffs are attacking the Jones certificate because they had it, plaintiffs in the captioned cause, which is all sixteen of them, most of which do not have any standing to attack Jones' certificate, so if the court brings the Jones case in, it's going to have a whole new line-up of parties in interest.

It is going to further complicate it in that I think then realistically some proposed motions that my intervenors have filed, if the supplemental complaint is allowed to be filed, to strike parties in interest or to strike parties plaintiff and to dismiss the complaint, and a number of other issues that are not present in this case will have to be heard by the court. I would not think that the court would want to further complicate this case by doing that. As to whether it can do so under the discretion of the court and as to whether these carriers can lie back in the weeds and come in for the first time when they have not shown to the I.C.C. any interest in the Jones case, I pointed out in my memorandum brief that, and I am aware of the doctrine of exhaustion of administrative remedies

is not a brand new doctrine and the Court, if it finds some compelling reason such as there is not an adequate administrative process can say, "Okay, we will not apply that doctrine", but I know of no attack on the administrative process of the Commission. I know of no allegation by the plaintiffs that they have not had an opportunity to exhaust their administrative remedies, and the fact that Arkansas Best and Mercury Motors and all of these others chose not to do that, they ought not to find some cute gimmick here by this supplemental complaint and be allowed for the first time to attack the Jones certificate. To me that's not fair play. To me that is not fair to government. That is not fair to the I.C.C. Is surely not fair to the 222 shippers that said seven or eight years ago they need the Jones service, and how many years are they going to have to wait for a final decision on that. It begins to be a process that is economically and judiciously ridiculous, but I think the court ought to be aware, too, that there might be further complications.

If the court is going to take every case that affects this case into this case,

the plaintiffs, as my affidavit filed on behalf of these show, are getting new authority every day. The competitive situation changes. Maybe some of their applications ought to be brought into this case if we're going to drag this one in. Where do we stop or start them. Why not stop before you start.

JUDGE MEHAFFY: I was going to ask you how we could do that.

MR. BLAIR: I could say that you could do it by, number one, denying the motion to file the supplemental complaint. Then all my other pleadings are unnecessary. That wipes all them out. I believe if you deny the motion for supplemental complaint you will find that Johnson, Red Ball and Jones will withdraw their motion to dissolve the T.R. I think you'll end that problem and I believe they will ask for -- I believe they would be willing to argue the case on the merits today, and I don't know why it couldn't be argued today. Everybody is here. And that case could be decided, or it certainly could be argued and decided on August 13th on the merits.

They have said repeatedly in the briefs -- there's 1100 pages of briefs that we've

got to assimilate, or do something about it.

MR. BLAIR: I think the court would be doing themselves a favor to deny the motion.

JUDGE MILLER: I don't know about that. We can't on --

MR. BLAIR: I think it's in the discretion of the court to deny this motion. I am not sure it's within the discretion of the court to grant it. I don't know that the court can subvert the venue statute, 28 U.S.C. 1398, and drag Jones into a court that he could not be drug into any other way by saying that this is a supplemental complaint. It's not an occurrence in that case. It was on a separate docket. It had separate parties, had separate issues, and the trial of the case, cross examinations and appearances were kept separate. It's true the record is consolidated but really is just another public and convenience, necessity in this case. It does not begin to compare with the magnitude of Arkansas Best's purchase of Youngblood or the many other expansions that some of the other plaintiffs make.

JUDGE MILLER: Don't mention Youngblood. I've got that one, too.

JUDGE WILLIAMS: Aren't you saying that a great portion of this voluminous record does not apply to the original suit by Johnson, the three carriers, and that we've got a tremendous amount of record that is not competent?

MR. BLAIR: Let me give one example. The Roadway application did not have anything to do with anything in this and you've got a couple of hundred witnesses in there for Roadway and a territory, and the only thing they had in common was that they was in the case anyway and wanted their case heard, and some of the protestants to their case were in the case anyway and truthfully, Your Honor, does not have anything to do with the issues before this court and that's several thousand pages of the record.

JUDGE MILLER: All right. I believe we have your ideas.

MR. BLAIR: All right. I do say I have some peculiar knowledge. I was there every day and if the Court wants to ask me any questions that I could draw on that knowledge I'd be happy to answer it.

JUDGE WILLIAMS: Let me ask one other thing. The order that is appealed from here is not a consolidated order appeal; it's three separate individual orders that have denied these three people any remedy.

MR. BLAIR: The docket was carried under a lead docket of Herron. The reason for that, it is traditional on a consolidated record you take the lowest M.C. number and you use that as the lead docket, but I think you will find that when orders came out if they affected everybody they had each ones docket number on there. If they affected only certain carriers, they only had the lead docket and those certain carriers' docket numbers.

JUDGE MILLER: That's what this was from.

MR. BLAIR: I think when those orders be granted they would have the lead docket and their docket numbers but they would not have the other docket numbers, and in my case it was down - the only one left alive, crippled though I was, was M.C. 111231, sub 6-7, which was the Jones docket.

Thank Your Honors.

BY MR. CROSS: Now, if Your Honors please, I represent Johnson Motor Lines, one of the intervening defendants, and by agreeing to conserve the courts time I will talk generally about the interest of the intervening defendants in the original action, the action filed last October.

You heard the Commission say that it does not waive venue because of various circumstances. You have heard Mr. Blair tell you and I'm sure you can see that if Jones is brought into this case it is bound to make delay and lots of it. We have a magestive counsel in Mr. Blair and his enemies over here. There will be more motions, more procedural gimmicks going on. This case, if Jones is brought in, will not be ready to submit it, I would estimate, until the first of 1974, perhaps later.

Meanwhile the intervening defendants, Johnson, Bowman and Red Ball, have been restrained - they have not been restrained but the Interstate Commerce Commission has been restrained from implementing the ord of certificates to Johnson, Bowman and Red Ball. We're sitting here, as a practical natter, the sufferers under

that restraining order. But for that restraining order Johnson and Bowmar and Red Ball would have the certificates, would have instituted the service that the shipping public testified to in this case over and over again, so we are the ones hurt by the delay.

We have fully briefed this case. We have been confronted, Your Honor, with plaintiffs brief, and I hesitate to use this word but which really are a smear campaign against the Commission and against us, the intervening defendants, primarily Johnson, which have so little merit and if we ever get to the merits we will show you that, that is delay. It has to be delay. So that we are the ones that suffer by the delay.

As undoubtedly this motion which came in here June 29th, it triggered Johnson's motion to dissolve the temporary restraining order. It is obvious that if this case comes in, the court ought to act on the T.R.O. and more readily on the application for preliminary injunction. Since the application for preliminary injunction and the criteria for granting or denying of it is the liklihood of success on the merits, there ought to be at that time - we're ready to go - on the

merits of this case. Let's get to these merits. Let's not wait for Jones to come in here, argue its merits, then get to our merits and keep this in mind, oral argument is not enough. The court has to make a decision and it seems to us inevitable that if the court lets Jones' case come in here, that it would necessarily then delay its disposition. It could hear the case tomorrow but it would necessarily mean that the disposition of the original complaint, the decision on the original complaint, would be held in abeyance until Jones was ripe, sometime in the early next winter. Then we would get our decision in a consolidated decision. But the intervening defendants who have been before this court since October are ready to go now on the merits. They want the decision on the merits now.

The lifting of the T.R., and I want to be very practical, would not give us complete relief. If the court, for example, is thinking well, we will take under consideration lifting the T.R.O., let these fellows get their certificates, let them get operating, then we will keep the case going, we'll let Jones in, we'll keep the case going 'til next winter sometime

when we can submit both of them. That is not a solution, Your Honor, and I speak for Johnson in this particular.

The service that the public supported the Johnson application for, was the handling of small shipments primarily. There was other, but primarily Johnson is a small shipment carrier. If it gets the certificate and it is faced with this, if it gets the certificate by lifting the T.R.O. and has to sit here then to worry about these merits until next winter or whenever the court could decide the consolidated cases, assuming Jones comes in, is in this dilemna. It cannot go out and invest the money needed to handle small shipments. Trucking companies cannot pick up and handle and distribute and sort and segregate small shipments without the investment of considerable funds. As prudent businessmen, Johnson - to its stockholders Johnson could not as a prudent businessman, invest the money in buying terminals and - in all the new cities its' going to serve, pick up delivery equipment, sorting and segregating equipment and institute this needed, the public needed small shipment service while this case was sitting here having been fully briefed

now on our part of it and waiting for Jones to become ripe. That would not be prudent business. Now, Johnson could do it and it would be some benefit to Johnson to have that certificate issued. It could get started. It could handle certain truck loads. It could arrange intermediate type of handling. It could provide some of the service that the public needed, but it is certainly, as a trudent business man, could not invest all of the money needed to provide the complete service they needed.

Now, just one more point. Your Honor, Johnson does not oppose Jones. The grant to Jones and the grant to Johnson are completely separate. There is not one common point on the Jones system that is on the Johnson system. But what plaintiffs are doing is asking Johnson to sit here until they bring the Jones case here, try the Jones case, then decide Johnson and Jones together, the awards to them, decide the agency or Commission proceedings, so there is no relationship. Johnson did not oppose Jones before the Commission. Jones did not oppose Johnson. They did not even participate in these other cases, and the cases were separate and distinct. Each had

their own separate docket so that we're the ones hurt by the delay. The delay is inevitable. The offer to hear this case or try it promptly as a condition to bringing in the supplemental complaint just is not acceptable, Your Honor. Trying a case of this kind is this. We're in appellant procedure. There is no trial. Argument on the merits. So that any time the three judges can get together, and I know that's difficult, a difficult process, but any time they can get together they can hear the oral argument. The trick is the disposition, and it's certainly -- If you let that supplemental complaint come in here it must be in your minds that it takes a joint disposition because there would be no other reason to bring it in here in the first place. So it's the disposition we're concerned about, not just getting an opportunity to orally argue it. We are ready to orally argue it today and we think if you deny this motion and you want to take up the question of the preliminary injunction, we would ask that you merge it right into the permanent, hear our argument, take it under disposition and decide it promptly.

Thank you, Your Honor.

JUDGE WILLIAMS: Before you go, do you concur in Mr. Blair's explanation of the consolidated case known as the Herring case being nothing but a convenient manner in which a multitude of cases have been carried along separately and individually?

MR. CROSS: I do, Your Honor. I think Mr. Blair said there were two lawyers that were there.

JUDGE WILLIAMS: Is the evidence that composes our record then a great portion of it in your opinion is not admissible, should not be considered by this Court?

MR. CROSS: Certainly as Mr. Blair pointed out, in the Roadway case you've got a lot of evidence down there which is in the Roadway case. It's not here and will never be here. Roadway withdrew it. The evidence the shippers gave for the Johnson service is not the same evidence that they gave as to the need for Jones' service because the two authorities aren't the same. They're different, territorially different.

JUDGE MILLER: Is this footnote -- I think this is true -- Does anybody dispute this footnote on Number Three on Jones brief that was submitted by Mr. Cross on the 23rd?

MR. CROSS: That's me and I have that memorandum in front of me. Footnote Three on page Three?

JUDGE MILLER: It's grounded on evidence of better need of transportation between the eastern seaboard and the Gulf states on the one hand and on the other specified cities, Mississippi, Louisiana and Texas, that Jones' award is grounded on the public need for better service between Arkansas, Kansas, Missouri and Oklahoma on the one hand, and on the other, Birmingham and Atlanta. That is the way it works out?

MR. CROSS: I wrote that, Your Honor, and I think it's the facts. Whether someone disputes it would be up to someone else to say.

JUDGE MILLER: That gives explanation to the order that the Commission entered in May - I mean on - well, it's attached to Exhibit 8 to the Complaint - to the Motion in this case where they corrected their original order.

MR. CROSS: I would not phrase it a correction. They reconsidered the Jones docket which was their second docket. They reconsidered it and took a different action on it, but I don't suppose - well, it's a matter of semantics or what you call it, but it's really a reconsideration of an order.

JUDGE MILLER: In that original order as counsel pointed out, traffic moving between Atlanta, Georgia and Birmingham, Alabama, and traffic moving between Fort Worth and Dallas, Texas on the one hand and on the other, Atlanta and Birmingham, Alabama, that was stricken.

MR. CROSS: As I understand the Jones award, Jones - the Commission in its second decision in Jones restricted the Jones award against any service between Dallas and Atlanta or Dallas and Birmingham so that it ends up that the Johnson award --

JUDGE MILLER: And in their commercial point zones, too?

MR. CROSS: Yes, Your Honor, and it's that award that makes the distinction between the Johnson. Johnson, for example, got authority between Atlanta and Dallas. Jones did not get authority between Atlanta and Dallas by that restriction.

JUDGE MILLER: That correction or change of that order was necessary because of those very facts.

MR. CROSS: Johnson and Jones were not in a comparative situation.

JUDGE MILLER: I understand.

MR. CROSS: That restriction in Jones just made it completely different awards to serve different public needs.

JUDGE MILLER: All right.

MR. CROSS: Thank you, Your Honors.

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MR. SMITH: I have just a few brief remarks I'd like to reply if I might.

JUDGE MILLER: I don't know of any reason why you shouldn't.

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BY MR. DON A. SMITH:

When we started out several hours ago it was my understanding that we were going to argue the question of whether or not the plaintiffs would be allowed to file their supplemental complaint. Johnson had filed a brief in opposition. The Government had written a letter. And Bowman had filed something this morning and had given it to us.

Without attempting to mislead the Court and following the characterization of Judge Miller, I thought we were going to argue two things. Number One, is there venue? And Number Two, will this create delay.

We have had two citations presented to the court. One was from a dissenting opinion in the Baltimore Ohio case which Mr. Glanzer said was applicable to the plaintiffs, characterizing us as being experts in delay. The second citation was a 1949 citation, United States versus Interstate Commerce Commission, which I think is a proper way that we should consider the Interstate Commerce Commission in this matter, and they refer to the Deficiencies Act.

Now, I respect all of these attorneys. I don't particularly appreciate being called an expert in anything because I don't consider myself one, but the derrogatory remark of being an expert in delay, I certainly do not appreciate.

Now, we have written a brief and we have argued to this court that our supplemental complaint is not filed for the purpose of delay. I have called Mr. Cross on the phone, I have written letters to everyone saying that we wanted to argue this case before this Court and Judge Miller had recommended the week of August 13 as being available.

We have listened this morning to the contentions again, "You're just going to delay". Well, I'll tell you what. I want to make this proposition to the Court because I think I am going to do the Court a favor and I know I'm going to do myself a favor. I don't want to have to listen to any more oral arguments. I don't want to be accused of being cute and making up gimmicks or using smear tactics or being an expert in delay. I suggest that with this Court's permission that we bring those four cartons of documents up there,

have them marked as an exhibit in this proceeding, and I assure you that the plaintiffs in this cause will submit to this Court recommended findings of fact and conclusions of law within seven days from today, and you can consider this case on the briefs without having to go through the ordeal of listening to any more oral arguments.

JUDGE MILLER: You're talking about the main case?

MR. SMITH: Yes, sir. The one filed on October 4, 1972, and the one that we're just simply trying to bring this court up to date on with the subsequent orders that have been issued by this Commission.

I want to put at rest once and for all that we are not here to delay. The Federal Rules of Civil Procedure give the court the prerogative to hold separate trials. We're asking you to do that. We're also asking you to follow that procedure and we will eliminate this question of delay and we want you to decide it and not worry about the Jones case except as it relates to the arguments that we have advanced in brief.

Now, I'll get back to the next question, this question of whether or not they waive venue. The Interstate Commerce Commission

says we've got a brief but we don't have it in final form and we're not going to submit it to you. Did you hear any cases cited in there that indicate the question of venue as even an arguable point on supplemental complaints? You did not. Did you hear them challenge the reading of 28 U.S.C. 1398 where it says "Any party in interest". Did not say one thing about having to be a party before the Interstate Commerce Commission.

Gentlemen, I have an Interoffice Memo that we prepared when we were researching the question of filing the supplemental complaint. It does not have a caption on it, but I'll be glad to run down to the Clerk's office and Xerox it and ask the Court to consider 49 U.S.C. 8305 Section 17 (9), 28 U.S.C. 1336 (a), 28 U.S.C. 1398 (a), 28 U.S.C. 822, 23, Atlantic Coast Line versus I.C.C., 149 Fed. 449; Alton Oil Company versus United States, 315 U.S. 15; The Encyclopedia of Federal Procedure, Third Edition, Section 73.123, and all the other cases that we have got in this to support our position.

No one filed a motion to dismiss this case for improper venue. This Court has gone through almost two and a half hours of listening to people talk about how they were in the hearing room for a

long time and how they understand this thing and we never have got to the gut issue and that is who is challenging the venue in this proceeding and for what reason and based upon what authority. There is no authority. That's why they can't show it to you. That's why they want to talk about delay. We put that to rest. Now, let's get on with the business of the day. We're asking permission of this Court to file the supplemental complaint.

Judge Williams asked an extremely penetrating question, several questions. I was interested in the explanations. The first question that he asked was, "Now, gentlemen, do you consider that the Jones case is completely separated than the Johnson case, for example?" And the response was, "Yes". If you will look at the order which is attached to the 114 M.C.C. and you look at page One, the Order of the Interstate Commerce Commission dated 30th day of December, 1971, as the lead caption Herring Transportation Company, there is not any order under Herring Transportation Company. Has McLain, Red Ball, has Deaton, Has Floyd Beasley, Strickland. And we get down here to Bowman, Johnson and Jones, and then the Order starts to read -- it was not a separate order. It was one order. In 117

M.C.C. the Interstate Commerce Commission, and I have quoted from this before but I would like to review it with the Court for just a moment. The application of Jones, quoting from page 587, and the applications of nine other motor common carriers were heard on a consolidated record and were the subject of a single report and recommended order by two Administrative Law Judges who recommended that all of the applications be denied as indicated in Herring Transportation Company, giving the lead docket and citation, and it goes on and talked about of those applications filed exceptions to the Judges' recommended Order, four southwestern carriers, namely Herring, Red Ball, Strickland and Jones, generally sought to extend their operations to Birmingham and Atlanta. In other words, they are talking about these people conjunctively because that is the way it was heard. You have read their briefs. You have seen every one of them, start out by saying "This was the largest motor carrier operating case. We had 900 witnesses". And you have heard that every since we started until today when Judge Williams asked the question and they looked down and found out that they had been trapped. Now, all of a sudden we have got to quick step. No,

no, don't consider all that record. Just consider what we had to say. Read the Commission's report. It does not talk about individual witnesses as such. It talks about collectively this so-called need. Those are the issues before this Court. That is why we want to file the supplemental complaint and that is why we have brought it as a subsequent action, occurrence or event to the initial basis for our litigation here, and Mr. Blair said he realized that I did not have the benefit of sitting in there in the hearing all of those years. Neither did the Court. But the Interstate Commerce Commission, and when he talks about Texas, Oklahoma, Kansas and Missouri, he forgot to mention one very important thing and that was that the Interstate Commerce Commission also granted authority, and I will use his words, from the hills of Chicago to the hills of Atlanta, Georgia, in direct competition to Arkansas Best Freight System.

Arkansas Best Freight System is a proper party to this action. It was a plaintiff originally and it is prepared to submit its affidavit in support of the grant of the temporary restraining order and this Court has got jurisdiction whether or not they file their brief or whether the

Interstate Commerce Commission wants to waive venue or not.

We need to get to the law of this thing and the law is this court has jurisdiction. This court has venue, and if we go out and this court says, "Don't file your supplemental complaint and we deny it", there is not one thing that prevents us from going back to this Clerk's office and filing a complaint and asking for them to be consolidated. The record is already here. It's in front of us.

Judge Miller asked a question concerning whether or not those petitions for reconsideration were filed. They are filed in this record, Your Honor, and they have been as they were tendered by the plaintiffs in this case. We have given copies to all of the defendants and intervening defendants of what we have put in the record and under the Jones case.

JUDGE MILLER: They are mentioned in Exhibit Light, too.

MR. SMITH: Yes.

JUDGE MILLER: I knew that. It's a little bit difficult to keep all these things in mind.

MR. SMITH: I don't know whether it was because

Mr. Cross was primarily interested in Johnson that he made the statement that Jones and Johnson are not in opposition to each other. I think important and of significance is the absence of the statement which he made to show that there was conflict in the authority purportedly granting to Jones that involved Bowman and Red Ball. Then if you think that this was just one individual little segment to Jones, one little individual segment to Red Ball and to Bowman, that's a misnomer and you should not be misled. Jones, in its evidence, is just as much an integral part of the record before this court and the decision for review by the Interstate Commerce Commission as any other party before that proceeding.

Now, the question was asked Mr. Glanzer, and I certainly am interested in that response. They said -- I believe his statement was the Jones matter was decided by the Commission independently. Well, the part of the record that Judge Miller asked him to read did not coincide with his earlier statement. But I would point out to the Court and I think this is veryimportant, there were three carriers in the proceedings, Bowman, Johnson and Jones, that referred to themselves as the trinity.

The put evidence on in conjunction with each other, and to come in now and say "We don't know each other and this was a separate action" is almost laughable and it's laughable even to the greater extent that when Mr. Blair filed his brief with the Interstate Commerce Commission in support of his petition for reconsideration he said Interstate Commerce Commission, the witnesses that you used to grant authority to Red Ball and Bowman were my witnesses and yet you deny my application with my witnesses. It's not fair. He used that same argument again today, that it was not fair. The significance of it is if you read the Jones decision in 117, the reference constantly is that - to the Herring case. The evidence before the Commission in the Herring matter. It was all on this consolidated record. Do not be beguiled into believing that it was separate and apart.

One other thing. In 117 M.C.C. the Commission adopted the report that was in 114 M.C.C. and referred to in its reference to the Trial Examiners.

JUDGE MILLER: They made the same statement in the original.

MR. SMITH: That is correct. So in conclusion,

we're asking the court for permission to file our supplemental complaint. Since we've gotten into the other issues we ask this court, (1) to recognize that this Court has venue because of A.B.F., Mercury Motors, and (2) we ask this court to allow us seven days to submit our findings of facts and conclusions of law, take that case and decide it as it was originally filed and has been supplemented.

JUDGE MILLER: The original case was decided.

MR. SMITH: Yes. There's things that we have brought before the Court and they should be considered, but as far as Jones and its T.R.O. we ask the Jones not to delay for the benefit of Johnson or anybody else. Decide the case and don't go through the ordeal of having to listen to me and other people argue the thing. Let's have it submitted, and we'll mark that for identification.

JUDGE MILLER: What do you mean by that, Mr. Smith? Decide the whole case? And the case as made by you in your supplemental complaint?

MR. SMITH: No, Your Honor.

JUDGE MILLER: Well, then, I understand.

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BY MR. STEVENS: If it please the Court, I find myself in need to make a statement by virtue of certain statements that have been made in pleadings and from the rostrum today.

JUDGE MILLER: And you are --

MR. STEVENS: Mr. Stevens.

JUDGE MILLER: Let me talk to these other gentlemen --

MR. STEVENS: I just want to make an explanation to the court, not submit any further argument.

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(At this time the Judges confer among themselves)

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JUDGE MILLER: All right, Mr. Stevens.

MR. STEVENS: Mr. Smith can make it for me. Either way. But as counsel I feel it imperative that I clarify a representation that has been made to the Court.

THE COURT: All right.

BY MR. SMITH: Mr. Stevens, I'm sorry I failed to mention this, but it is an important consideration. In the affidavit that was filed by Mr. B. J. Wiseman representing Jones Truck Lines and referred to by Mr. Blair in his argument, a statement was made concerning Red Lion Transfer and Storage and its

participation. I believe the Court, in referring to Mr. Wiseman's affidavit, will say that Mr. Wiseman has talked to somebody who he has not named and that they are not in opposition to the Jones matter or words to that effect and that they instructed counsel not to participate.

I do not know whether that evidence is probative or not and I really seriously doubt that it is, but because it was said in the affidavit and because it has been referred to in arguments before this court I think it is important that this court hear the telegram addressed to Mr. Stevens, Attorney at Law, Suite 700, Petroleum Building, Jackson, Mississippi. "I assure you that my company continues to oppose the Jones Truck Lines Sub. 67 case since the approval would greatly impair my company's ability to continue rendering adequate service in Arkansas." Signed, L. D. Davis, Secretary-Treasurer, Red Lion Transfer and Storage Co., Inc. And I tender that telegram into the record with the affidavit of Mr. Stevens so that there will be no mistake about that question.

JUDGE MILLER: All right.

MR. BLAIR: Could I be advised the date of the telegram?

MR. SMITH: 7/20/73 it appears.

MR. STEVENS: I want to make it clear, if I may. I am counsel of record for Red Lion. I have been counsel of record for Red Lion for years before the Interstate Commerce Commission. No one has ever asked me to state the position of Red Lion, and when this came in a pleading that I have received instruction that my client feels thus and so, it did not come from me, and I wanted to be sure that I was current in my representations to this Court concerning the position of my client, and when they called me I asked them the question.

JUDGE MILLER: And you found out you had not been fired?

MR. STEVENS: I found I had not been fired.

MR. BLAIR: If it please the Court, I have a gentleman in the hearing room who says that he has had personal conversation with L. D. Davis that is absolutely contrary to that telegram and the only thing I know, if we're going to get to that issue, is put Mr. Davis under oath and interrogate him as to whether he has told more than ore story or how this confusion came about.

JUDGE MILLER: I don't think that's too material to the question before the Court. I don't

think it's reached the point yet in the supplemental complaint of dividing the sheep from the goats. We don't know whether there will be individuals or not or just class them all as one or the other. That's about what we're going to do. We're going to make some kind of a decision on this motion to file supplemental complaint and then, you know, if we permit it to be filed, to raise a lot of other questions.

* * * * * *

MR. MAURICE F. BISHOP:

May I be heard for a moment in response to the suggestions, or perhaps the stipulation proposed by Mr. Smith?

I am Maurice Bishop. I represent Bowman Transportation at this proceeding, one of the intervening defendants. If I correctly understood Don, Mr. Smith, his proposal was the three cases that are presently before this court be completely severed from any consideration of the Jones supplemental complaint or motion to file a supplemental complaint, and it is now ripe for judicial proceeding with dispatch and towards an early decision. With that we are in absolute accord. That is, insofar as an immediate decision is concerned and complete severance from the Jones case. That becomes a question then for this court in good conscience to determine and that is whether in the submittal and under that proposed stipulation this court feels that it can and would proceed with an immediate dispatch toward consideration of the case under review. An immediate decision on those issues, we join in that. If the court feels it can accomplish that we join in the

proposition that we submit stipulated facts or proposed facts and conclusions within the seven day period.

JUDGE MILLER: Go ahead.

MR. BISHOP: On the other hand, if there is any question Mr. Smith has likewise pointed out that he could, if he has venue, that he could file a separate lawsuit and we commend to the court that probably is certainly the most advisable course to pursue so that no question can be raised. He says that he could file a separate lawsuit in this jurisdiction by going around to the Clerk's office. We commend that action. Then there would be no question in the world about the complete severance of the Jones case from these cases.

He pointed out correctly with respect to 114 M.C.C. that it listed all cases, but as the Court noted, if you could see that sheet, it listed all those cases separately with separate docket numbers and in the Jones case if you will look at that order which was the subject of the motion for supplemental complaint and as reported in 117 M.C.C., it makes reference only to the Jones application Sub. 67, completely separate and a separate case. Your Honor, you

had a question?

JUDGE MILLER: I believe you just about answered it except did you understand Mr. Smith to say that we go ahead and decide the case insofar as Red Ball, Johnson and Bowman are concerned and then take up separately the supplemental complaint?

MR. BISHOP: It was my understanding that his proposal encompassed two very important and critical things. Number One, is the submission, and Number Two is the decision, because it's the general public that is being delayed.

JUDGE MILLER: Just suppose we did that. Where would we come out? When you start falling you've got to find some place to light.

MR. BISHOP: That's why I say this Court in its conscience and its own mind would have to determine whether as a matter of judicial approach it could work that severance and all doubt could be resolved by a proceeding as Mr. Jones suggested, as Mr. Smith suggested, walk around to the Clerk's office and file a separate lawsuit. Then this court can proceed. Then the Court can proceed in an orderly fashion. If the Court has jurisdiction the Court will so determine.

JUDGE MILLER: I think you ought to file it in some other jurisdiction.

MR. GLANZER. I'll say this in answer to that. There's well over 100 jurisdictions in which it could be filed. There's well over 100 jurisdictions in which this case could be filed.

JUDGE WILLIAMS: Before you conclude, Mr. Bishop, I suppose the Court should take the whole thing under submission at this time. Is there any matter that has not been thoroughly briefed as far as you and your client are concerned that you would care to raise in additional oral argument?

MR. BISHOP: Insofar as the Bowman, Johnson and Red Ball cases are concerned, Your Honor?

JUDGE WILLIAMS: Yes, sir.

MR. BISHOP: Those have been thoroughly briefed and are ripe for judicial review. It would be this Court's determination whether they desired oral argument. There are some matters --

JUDGE WILLIAMS: In your oral argument would you have anything to add other than what you've already said?

MR. BISHOP: Have some brief answer to the reply brief which we feel raised some new matters. That

could be handled on brief likewise if the Court would desire, and it can be filed along with the proposed stipulations or conclusions of law and findings of fact that would encompass a suggested order to this court for its consideration..

JUDGE WILLIAMS: All right.

MR. BISHOP: Thank you.

* * * *

JUDGE MILLER: As I understand, that concludes the argument on reference to the motion to be permitted to file supplemental complaint and I indicated I believe the court would like to determine that question first before reaching the other questions.

We have got a pretty good understanding from the argument here that if that motion is denied I imagine from what was said here they would be glad to, you would be willing to waive your contention or motion that the T.R.O. would be dissolved if the Court went ahead and accepted the record here and approached it on a decision of the merits as soon as could be done.

MR. CROSS: Your Honor, we have a motion that the Court hear the application for the Interrogatory or Preliminary. That motion would raise the liklihood of success on the merits as one of the criteria for the granting or denial of it.

There is also before you the application for a permanent injunction. That goes to the merits. Those two things are absolutely integrally related, so we would suggest that you hear the application for preliminary

injunction that you merge it with the permanent injunction and act on them both.

JUDGE MILLER: But the point I was making, Mr. Cross, is this. Now, following that suggestion and submit the case today on the - the main case today, you can't just wave a wand and up comes an opinion. It is going to take some time on that. Just how much time it will take I don't know, but I will say this. Most of us are busy. I am probably the least busy of the bunch. I don't know just why but - because of the respect of age, you know, I am probably the least busy of all, but I don't see how an opinion could be prepared overnight on this case. I would not want counsel to feel like that it would be coming out next week. All I could say to you, it will come out just as quickly as it can. That's all I could say.

MR. CROSS: So much of this as I see it, Your Honor, is conditioned or is then related to the motion to supplement. If that is granted and that case comes before you that puts this thing in an entirely different posture as to delay, as to time for your decision, time for the submission

of the supplemental complaint. That is interrelated.

MR. SMITH: Your Honor, I am sorry, I don't mean to be Jack in the Box about this thing. This entire argument of trying to correlate delay with the supplemental complaint is preposterous. This Court has Federal Rule 20 and 42.

JUDGE MILLER: I did not construe that and I don't believe the Court did, that said you had delayed, the delay that has been occasioned in the case, but I don't think you can put your finger on anybody, anybody's delay. The case has just been delayed. That's all.

MR. SMITH: The point I'm making, Your Honor, is this. Mr. Cross is trying to say, "Now, don't grant that supplemental complaint because it will cause delay". That is not true. Mr. Cross is here before this court representing one client and that's Johnson Motor Lines, and he wants a decision in that case. My proposal was that this matter be submitted today and we will furnish you requested findings of fact and conclusions of law and we ask the court to consider it.

JUDGE MILLER: On the main case?

MR. SMITH: On the main case. Now, that does not

have anything to do with his allegation of delay for the supplemental complaint.

JUDGE MILLER: Then you would want to submit a motion for T.R.O. in the case made in the supplemental?

MR. SMITH: Yes, but that would not interfere with this court's decision in the main case.

JUDGE MILLER: I understand, but there is also entered my mind -- I think I've got your ideas. Judge Mehaffy says we ought to inquire if anyone else has anything to say, to submit to the Court before we try to consider some of the questions that are concerning us right now.

MR. SMITH: The plaintiffs have nothing more.

MR. GLANZER: I have said all I have to say.

JUDGE MILLER: We're going to take a recess until 2:00 o'clock. In the meantime we will do a little conferring and try to make up our own minds and tell you something about 2:00 o'clock. Court will be in recess until 2:00 o'clock.

MARSHAL: Court is in recess until 2:00 o'clock.

RECESS

2:20 p.m.

MARSHAL: Everyone will rise. Court now resumes in session. You may be seated.

* * * * *

JUDGE MEHAFFY: Gentlemen, after due deliberation which most of you witnessed we have come to a conclusion on this facet of the case and I will ask Judge Miller - which will take an advisement - ask Judge Miller to announce it.

JUDGE MILLER: There is very little to say in the conclusion we have reached and that is simply this. We do not believe that there is a sufficient relationship between the motion to be permitted to file supplemental complaint and the issue that is before the court and which was attacked in the original complaint. Therefore, we are going to overrule the motion to file an amended or a supplemental complaint. I might add that we're going to have to put in that order without precedent - I think it is surplus, I don't think it will amount to anything anyway, but we feel like justice to all parties concerned can best be had by separate independent proceeding by these plaintiffs who are dissatisfied with

the order entered relative to Jones filing a separate suit. We feel that is the way to do it because this record, although tried on the same record by stipulations or otherwise, it will take you six months to separate the wheat from the chaff in trying the Jones case. I say six months - it will take me longer than that, but it will take some of you a good long while to do it.

There are a great many reasons which I am not going to enumerate because I don't think it is necessary. The order will go denying and dismissing the motion for authority or permission to file supplemental complaint.

Now, that brings up the motion of the Government and the other defendants relative to the setting aside for the time being the T.R.O. and with that the court feels that motion if presented would be overruled and I understood that you might withdraw that request in view of the fact that in a decision of the case, the main case, we will be confronted with the question not only preliminary,

but permanent injunction, and I think it is possible, I think it is entirely correct to consider the question of injunction in connection with the merits of this particular case so what we expect to do, unless there is someone that desires to submit further arguments on the merits of the three of the main case, the first case, the first complaint, if there is no further arguments to be submitted on that, we are going to submit that case and take it under consideration and proceed to prepare some decision in that case as quickly as we can. Now, that is the position of the Court. That's about all the Court has to say unless somebody does ask for the setting of a special date for argument on the main case.

I cannot understand how it can be made any clearer. I don't care how clear your arguments are, the question still remains there that is pretty hard to solve and so -- Now, there was one thing that was said by Mr. Stevens - no, it was - well, --

MR. JONES: Mr. Bishop, maybe.

JUDGE MILLER: Yes - that desired to file in view of some statements made in the reply brief from

the plaintiffs in this case, that you desired to file memorandum to refute some of those insinuations which I believe was the way it was stated. We have no objection to that, so if you want to do it you'd better do it in one weeks time.

Now, is there any other suggestions?

CROSS: May I have a brief moment to talk to my colleagues concerning my motion to hear the preliminary injunction today? I just want to chat with them.

GE MILLER: Yes.

GLANZER: I am not quite sure I heard what was said. Do I gather that the case will stand submitted on the merits at this point without further oral argument?

GE MILLER: That is our present opinion about it. If anybody else desires to submit I say any objections to that, they may do so, but then we feel like the case has been thoroughly argued. It was thoroughly argued as a matter of fact, in November when the Court heard that motion for a T.R.O. It was pretty thoroughly argued then. But now since that time the briefs have come in and you can

say what you want to about them but they are pretty full.

MR. OULAHAM: I'm Courts Oulaham. I wonder if the defense counsel could have five minutes to talk among themselves because we certainly don't want to hold the court up this afternoon.

JUDGE MEHAFFY: You may. Court will be in recess then.

MARSHAL: Court will be in recess for five minutes.

RECESS

* * * * *

MR. GLANZER: Your suggestion is acceptable to us. The defendants would like to ask rather than seven days which was suggested by Mr. Smith who is local in Fort Smith - most of us have to get back to other cities and plane travel is not too easy for all of us - it would be appreciated if you would allow us, instead of seven days, until Friday, August 3rd, to put whatever replies we wish to in the mail to the Court.

JUDGE MILLER: Of course, those replies would only go to the new issues made by the reply brief.

MR. GLANZER: I understand that. That's our understanding.

JUDGE MILLER: I just wanted to be perfectly frank

about it. I have no objections. When did you say, August 3rd?

MR. GLANZER: August 3rd instead of July 31st, Your Honor. It's just another three days, because of the travel aspects and whatever additional matters any of us might have in other courts.

JUDGE MILLER: You don't contemplate coming back on that date, do you?

MR. GLANZER: No. My suggestion was that we be permitted to put whatever replies we had in the mail on August 3rd.

JUDGE MEHAFFY: That's all right. Why don't you take until about the 10th or longer.

MR. GLANZER: You're saying August 10th?

JUDGE MEHAFFY: Any time. I'm giving you more time, more time than you asked for, if it takes that to be reasonable.

JUDGE MILLER: I think they could get them in here by that time.

MR. GLANZER: By the 10th then, is that when you said, Your Honor?

JUDGE MILLER: It's all right with me. I don't care.

MR. GLANZER: We're willing to comply with August 3rd date.

JUDGE MILLER: The sooner you get them in here the

sooner we can get to work on them.

MR. GLANZER: If something develops that additional time is needed, the court is always in business and no problem, but we frankly intend to get our responses in the mail to the court not later than August 3rd which is about 10 days from now instead of seven.

JUDGE MILLER: That's all right. Did you start to say something, Mr. Smith?

MR. SMITH: I don't understand. Are we now opening the thing up for new briefs?

JUDGE MILLER: No. You did not understand what I said. Some of the gentlemen - I believe it was Mr. - well, they said there was some insinuations or statements in the last few pages of your brief, reply brief, that had not been mentioned before that he would like to have an opportunity to reply to those particular statements. That was what I had reference to. It's not going to be any briefs on the merits at all. Where is the brief? I can point out what it is.

MR. SMITH: If the Court understands it obviously then that's the ruling of the court and that is all right, but there's other matters that I think should

be brought to the court's attention, if you don't mind.

JUDGE MILLER: All right.

BY MR. DON A. SMITH:

First, I think it appropriate at this time, if we ask the court to have marked the record which we have earlier furnished to the court so that we will have made our tender of the record to this court.

Now, I would ask some representative of the defendants if this is acceptable so that this matter can be done at this time.

JUDGE MILLER: Whether it is acceptable or not it will be done.

MR. SMITH: Thank you.

JUDGE MILLER: A record is a record.

MR. SMITH: If the Court please, will we be allowed to submit to the court requested findings of facts and conclusions of law?

JUDGE MILLER: I'm glad you mentioned that. That's on the main case, the one we're taking -- Yes, I'd be glad to have it and serve them on each other just like you do, but get them to us because what these men are hinting to me pretty strongly, they want me to prepare something

for their criticism or for them to criticize and I want to get at it myself pretty soon. I have been at it some but I never did believe, when you've got to do something, you might as well to go ahead and do it, right or wrong.

MR. SMITH: If you please, Your Honor, we will in anticipation go ahead and prepare the proposed findings of facts and conclusions of law.

JUDGE MILLER: You will get them to me in plenty of time.

MR. SMITH: And we will await whatever this thing they are going to file is going to be to see if there are any changes to be made, then we will submit them.

JUDGE MILLER: There is not going to be anything considered by the court on the merits of the case. Just on those two or three items there that you got pretty raw about, and I don't mean that as a criticism.

MR. SMITH: It would not do me a lot of good if I took it that way. Now, Your Honor, one other thing. If you will recall in the structuring of the matter which you have heard today, I think representatives of Jones and representatives of the Interstate Commerce Commission contacted this court

and advised the court that if this court proved to be the forum of the plaintiffs in the Jones case that rather than enter a temporary restraining order without notice, that they be given time in which to be heard on the matter. This information was conveyed to us by Mr. Glanzer and we complied with that, as you know.

JUDGE MILLER: Yes.

MR. SMITH: Serving copies not only on Jones' counsel but also on all parties of record and asked the court to set a date for a hearing rather than asking for the temporary restraining order.

By agreement the Interstate Commerce Commission agreed to withhold the issuance of the certificate to Jones until July 27, 1973.

Now, by the action of this court in denying our right to file the supplemental complaint we are faced with three days from today on the issuance of that certificate because we complied with their request that they be given notice. We would like to ask the Commission if they would agree to agree to an extension of the issuance of that certificate for a period of thirty days to permit us now

to re-group and as Mr. Bishop indicated, there are other forums available so that we can prepare and file our lawsuit and request that the certificate be enjoined until it can be heard and reviewed by the court.

JUDGE MILLER: I don't know whether we would have anything, have any authority to make a ruling on that or even submit a request, but Mr. Glanzer is here and he is Chief Attorney for the Interstate Commerce Commission. What do you think about that, Mr. Glanzer?

MR. GLANZER: I think I need some time to speak to people in Washington on it. I need at least ten or fifteen minutes to speak to the people in Washington on this, Your Honor. I don't want to deprive these people of an opportunity to bring their action in another forum, but I think thirty days is completely unrealistic at this stage. We have already adjourned the issuance of the certificate for a period of time.

MR. SMITH: At your request.

JUDGE MILLER: Yes, the certificate on Jones order.

MR. GLANZER: Yes, on the Jones certificate. I am prepared to speak to Washington on it in the next

fifteen minutes or so, if I can get through to them on the telephone, but I would also like to speak to the Jones people because they have a voice in this also, but I agree with counsel that they should be given an opportunity to find another forum. No question about that.

JUDGE MILLER: I think that I heartily agree with that latter statement but I doubt whether this court should enter an order just in thin air like this with nothing before it to base an order on asking the Commission to delay issuing the certificate of convenience and necessity, but that is a matter that ought to be reached by agreement between the parties.

I imagine if there's any options on it, amendments can always be made in some court to issue a T.R.O. That's what they're trying to avoid, of course.

Mr. Smith, suppose you and Mr. Glanzer talk, talk that matter over and see if you can't resolve that some way or other.

MR. SMITH: The only reason I brought it to this court's attention was because we had agreed to give them notice at the presentation.

JUDGE MILLER: I think it would be fair.

MR. GLANZER: Yes. I'm not trying to step on anybody's rights.

JUDGE MILLER: I know you're not.

MR. BLAIR: If it please the Court, I think Jones - well, I've been here appearing for shippers rather than Jones I also represent Jones. Jones voluntarily, although reluctantly, agreed to let the issuance of its certificate be withheld and voluntarily extended that on a couple of occasions. I don't know how much more I want to do, but I would like an opportunity to visit with my people about it. I think I have a great deal of interest in how much time is involved.

* * * * * *

MR. BLAIR CONTINUED:

and I think the Court knows I am taking an unreasonable attitude.

JUDGE MILLER: Well, I don't know whether a new case will be filed but I do think that in view of the turn that this case has taken, I do think that these people ought to have an opportunity to contest the Jones without and I think, I guess I am old fashioned, if things are going to be reviewed by the Court I think it ought to be held in status quo whether it is a TRO or whatever it is except in extradionary case and I don't think that Jones Truck Lines will suffer and I am pretty sure that by the judging of the number of trucks running around on the streets and on the highways I doubt whether any shipper would be seriously handicapped by delaying ten, fifteen, to twenty days; so if you can work it out, but if you don't work it out then you've got to file some kind of a make shift case and then amend it. You know there is always, as the old saying goes, there are lots of ways to choke a cat, so you can get your relief. Now, there was one other, well, I guess we had better just let that stand; now, there was another Order

that Mr. Blair, on all your Motions here --

MR. BLAIR: I would like to withdraw all those if the Court, please.

JUDGE MILLER: All right, I will - - enter, I will enter an Order ordering them removed anyway so I will just let you withdraw them. I guess that is about all we can do.

MR. BAILEY: My name is H. Ward Bailey, an attorney from Texas. My name is on all these Pleadings. This is my first appearance here. I just want to get my name in the record. If the case has already been submitted, I am not clear whether it has been or not, has it been submitted on its' merits?

JUDGE MILLER: On its' merits, yes, sir.

MR. OULAHAM: Your Honor, I am Courts Oulaham, representing the Intervenow. I am not clear, Your Honor, as to what it is that will be - - we will be permitted to file on August 3rd, because of certain statements were made by the distinguished colleague from Fort Smith ---

JUDGE MILLER: Well, let's see here, Mr. Bishop you raised the question --

MR. BISHOP: Yes, I raised the question. I said

there was some statements in the reply brief of plaintiff that we would like to respond to, very briefly; on the proposition of submission we ask for a few days to do it. This record would show that we have timely filed all of our briefs and will shortly file this Memorandum.

JUDGE MILLER: He was wanting to know what the statements were in a general way.

MR. BISHOP: I state very frankly, in a reply brief it makes a statement that very frankly I am called on to respond for the first time in my 30 odd years of practice. In one section of the reply brief that certain factual statements that we made in that brief were inaccurate and that the legal propositions are unsound. I am not concerned with the legalities. I can understand how different parties with respect to legal propositions, how we would deal with them, I may be overly senitive but I am concerned on the proposition that a statement was made and was factually incorrect and I wish to point out the exact inaccuracy in the statements.

JUDGE MURRAY: May I make this suggestion; I don't think they are pertinent in this but for your

satisfaction can't you just file an affidavit?

MR. BISHOP: Yes, sir.

JUDGE MEHAFFY: We are not going to pay any attention to it, I will tell you that, but yet we don't want to have another round.

MR. BISHOP: It is just the first time I have ever been called on in Court in 30 years to make such a response.

JUDGE MILLER: If you are never accused of anything worse than that you are a good man.

MR. BISHOP: I hope so, Judge.

MR. BLAIR: Have you been a Commerce lawyer?

MR. BISHOP: Transportation and Commerce lawyers, that is what we call ourselves, but when I read that section and found out the other side might call you something else ---

MR. BLAIR: Maybe you have been in the experience you have had.

MR. BISHOP: If that is a situation to avoid we would join in and submit on the suggested proposed findings of facts and conclusions of law.

JUDGE MILLER: That is the way we do it, the best way to do it.

MR. BISHOP: All right.

JUDGE MILLER: We are not going to fix any time for

you to put them in here but it will be to your advantage to get them in pretty soon.

MR. BISHOP: Be in very promptly, Your Honor. That is very frankly what we had in mind, that is the portion we want to reply to.

JUDGE MILLER: Well --

MR. OULMAN: My colleague here has clarified the matter; I was going to join with him but I am a trial lawyer, not a commerce lawyer and I have had poisoned arrows thrown at me before but they never hit me and never will. We will submit a very brief proposed findings.

JUDGE MILLER: Whatever is a commerce or trial lawyer or whatever it is makes it easy on the Judge; I guess that is about all then.

JUDGE MEHAFFY: I am not sure they understand as I do as I understand it; we will take this under submission?

JUDGE MILLER: That is correct.

JUDGE MEHAFFY: You've got to sell me and Judge Williams.

JUDGE MILLER: I want you to read the briefs and be familiar with it, then we will meet.

JUDGE MEHAFFY: I have read the briefs except those

that came in late.

JUDGE MILLER: I am not prepared to decide it today on the merits, so if that is what you are driving at ---

JUDGE MEHAFFY: No, I am driving at this; I think there might be a little of misunderstanding about the details which you related, the disposition you are going to make.

JUDGE MILLER: I tried to make it perfectly clear, we are taking this under consideration and dispose what was before us.

JUDGE MEHAFFY: If we do that, that is what I understood, if we do that I am not too disturbed about these agreements because we can put that in the Order.

JUDGE MILLER: You have tried enough lawsuits; you know there has always got to be window dressing, that is the way that goes, we have just decided on the record.

JUDGE MEHAFFY: Is that those four cartons --

JUDGE MILLER: I am going to let you take those down.

JUDGE MEHAFFY: If I understand it now, this Court will be in recess subject to call, not on a day certain but on call.

JUDGE MILLER: Why would that be necessary; why would it be necessary to call the Court?

JUDGE MURPHY: They may come up with something else.

JUDGE MILLER: No, they won't.

JUDGE MURPHY: I said subject to call; if we want to call it we can. I don't want to endanger this Court until this business is over but we will take it under submission and adjourn subject to our call.

JUDGE MILLER: That will be all right; that is the way the Order will be entered anyway in the Clerk's Office.

JUDGE MURPHY: Gentlemen, this Court is adjourned subject to recall.

MARSHAL: Court is adjourned.

****

C E R T I F I C A T E

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the Hearing had in the above styled cause at Fort Smith, Arkansas, on the 24th day of July, 1973; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said Hearing as shown by my notes.

J. Dale Yarborough

Dated this 28th day
of August, 1973.

APPENDIX F

Joint Proposed Findings of Fact and Conclusions of Law submitted by the United States of America and the Interstate Commerce Commission filed August 13, 1973.

Civil Action No. FS-72-C-65

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION,

Defendants,

and

RED BALL MOTOR FREIGHT INC.,
JOHNSON MOTOR LINES INC., and
BOWMAN TRANSPORTATION INC.,

Intervening Defendants.

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

S E. KAUPER
tant Attorney General

JOHN H. D. WIGGER
Attorney
Department of Justice
Washington, D.C. 20530

L B. LAREY
d States Attorney
Smith, Arkansas 72901

Attorneys for the United States of America

R. KAHN
al Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

ttorneys for the Interstate Commerce Commission

AUGUST 1973

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FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, and RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and BOWMAN TRANSPORTATION INC., Intervening Defendants.	)	Civil Action No. FS-72-C-65

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

FINDINGS OF FACT

This is an action to set aside the decision of the Interstate Commerce Commission in Herrin Transportation Company, Extension--Atlanta, Ga., 114 M.C.C. 571 (decided December 30, 1971), granting common carrier authority to three applicants--Red Ball Motor Freight, Bowman Transportation and Johnson Motor Lines, Inc.--to transport general commodities by motor vehicle over regular routes between specified points, generally in the southeastern and southwestern portion of the United States. 1/

The proceeding was commenced by the filing of an application by Roadway Express, Inc. on December 7, 1964. By July 30, 1965, applications had been filed by sixteen other

1/ Generally, those points lie west of Atlanta, Ga., Birmingham, Ala. and Pensacola, Fla. and east of Houston, Dallas and Fort Worth, Tex. That territory is approximately bounded on the north by a line from Topeka, Kans. to Kansas City, Mo.

motor carriers, all seeking to conduct general commodities operations between points in the Southeast and Southwest. As notices of applications were published in the Federal Register, protests were engendered from carriers with existing authority. In order to develop an orderly procedure for handling the applications, a prehearing conference was held on September 9, 1965. Following the conference, ten of the twenty applications were selected for consolidation in one proceeding.

The territorial scope of the applications varied in accordance with the existing authroities of the ten applicants[2/] and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories, by area. For southwestern applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the Southeast. Five southeastern applicants, Bowman, Johnson, Floyd & Beasley, Deaton and Baggett[3/] wished to obtain authority to the Southwest, primarily to Texas points.

Two hearing examiners were assigned to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about eighteen months. Nine hundred and fifty witnesses testified on behalf of the applicants. Of that number, nine hundred and thirty-three were public witnesses,

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2/ The full name of each applicant and the docket number of its application, arranged chronologically, by date of filing, appear at Appendix I, annexed hereto. Those applicants will hereafter be referred to by the name shown in parenthesis in Appendix I.

3/ Roadway's status and application were somewhat different in that it already operated in both the Southeast and Southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.

receivers and shippers, who gave evidence in support of one or more of the applications. The applications were opposed by sixty-six protestants six of whom subsequently withdrew their opposition. Evidence in support of forty-eight protestants was offered by sixty-two witnesses.

The examiners' report and recommended order, although finding each of the applicants "capable of performing the operation proposed", recommended that the application be denied on the ground that the applicants "had failed to establish that the present or future public convenience and necessity require[d] the operations proposed."

Eight of the applicants and some forty-one shippers, filed exceptions to the examiner's report.[4/] Inter alia, they collectively excepted to the organization and evaluation of the evidence by commodity to the substantial exclusion of the requirements of the territories and points involved in their general commodities application. Replies to those exceptions were filed and the matter came under consideration by the Commission, Division 1.

In its decision, the Commission found that the examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis'."

4/ Neither Roadway nor Floyd & Beasley filed exceptions. As to Roadway, the denial by the examiners became the order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. See notice of March 24, 1970. The exceptions of the other applicants nominally embraced Floyd & Beasley, which had the effect of staying the finality of the examiners' report as to it. However, Floyd & Beasley's application was denied. Herrin at 114 M.C.C. 612.

Herrin 114 M.C.C. at 599 at 591. [5/]

After an extensive analysis and comparison of the evidence in support of and in opposition to the applications, the Commission concluded that the applications of Red Ball, Johnson and Bowman should be granted. Herrin, 114 M.C.C. at 599, 612-614. [6/] It found, (id. at 599):

> The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

The Commission then summarized the reasons for its ultimate finding, Herrin 114 M.C.C. at 599-600:

> Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East, and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the avaliable motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting

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5/ The restatement of the supporting evidence, organized geographically appears at Appendix E, Herrin.

6/ None of the unsuccessful applicants is a plaintiff and there is of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, fn. 14, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customers' complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

Petitions for reconsideration and other pleadings were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September, 1972, the Commission, Division 1, Acting as an Appellate Division, denied or rejected all the petitions, except the one filed by Jones. At this point, the proceeding except as to Jones became administratively final. Petitions seeking a declaration by the Commission that the proceeding involved an issue of General Transportation Importance were denied by order dated October 6, 1972. 7/

The Complaint was filed in the Court on October 4, 1972, by sixteen plaintiffs. Later, three others were given leave to intervene as plaintiffs. All plaintiffs, except one, Arkansas-Best Freight System, Inc., (A-BF), were protestants to one or more of the applications which were granted. On November 7, 1972,

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7/ At the time this action was filed, the application of Jones Truck Lines, Inc., in Docket No. MC-111231 (Sub-No. 67) had not yet become administratively final. Jones' application was reopened for reconsideration on the present record by order of the Commission, entered September 1, 1972. On reconsideration the application was granted in part and denied in part. Jones Truck Lines, Inc., Extension--Atlanta, Ga., 114 M.C.C. 586 (decided December 6, 1972). The Jones application became administratively final on May 29, 1973, when the Commission denied petitions for reconsideration of its December 6, 1972, decision. Plaintiffs thereupon filed a petition for leave to file a supplemental complaint in this action to include allegations of error by the Commission in authorizing a grant of authority to Jones. This Court denied that motion, with prejudice, on July 24, 1973.

Judge John E. Miller entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity in Herrin until the completion of judicial review proceedings before the three-judge court.

CONCLUSIONS OF LAW

The Commission's decision herein was issued under Section 207(a) of the Interstate Commerce Act, 49 U.S.C. §307(a), which provides as here pertinent:

> Subject to section 210, a certificate shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: * * *

The limited scope of review of decisions of the Commission is well settled (see, e.g., Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966); Universal Camera Corp. v. Labor Board, 340 U.S. 474, 488 (1951); United States v. Pierce Auto Freight Lines, 327 U.S. 658, 663 (1926)), and has been recognized by the Courts in this District on a number of occasions. See Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257, 264 (W.D. Ark. 1966); Reddish v. United States, 188 F. Supp. 160 (W.D. Ark. 1960) affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 178 F. Supp. 771, 773-774 (W.D. Ark. 1959). In Patterson v. United States, Judge Miller reviewed those principles at length (178 F. Supp. at 773-774):

The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. In United States v. Pierce Auto Freight Lines, Inc., 1946, 327 U.S. 515, at page 535, 66 S.Ct. 687, at page 698, 90 L.Ed. 821, the Supreme Court said:

> "We think the court misconceived not only the effects of the Commission's action in these cases but also its own function. It is not true, as the opinion stated, that '*** the courts must in a litigated case, be the arbiters of the paramount public interest'. This is rather the business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law".

He continued:

> The weight to be given by the Court to an administrative finding is well established. In Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S.Ct. 108, 111, 56 L.Ed. 208, the Supreme Court observed that it would "not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling." In Georgia Public Service Commission v. United States, 283 U.S. 765, 775, 51 S.Ct. 619, 623, 75 L.Ed. 1397, the Court said:
>
> > "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the considerations of its conclusions with those reached in similar cases".

In a recent case arising in this circuit, involving a similar order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D.C. D. Minn. 1959, 169 F. Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S.Ct. 140:

"As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S.Ct. 687, 90 L.Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S.Ct. 589, 87 L.Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D.C. 158 F. Supp. 248; Minneapolis & St. Louis Railway Co. v. United States, D.C. 165 F. Supp. 893."

Judge Miller concluded:

The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502.

Thus the principal issue in this case is whether the Commission acted within its discretion in concluding that the proposed service, to the extent granted, was required by the present or future public convenience and necessity. For the reasons hereafter stated, we conclude that the decision of the Commission was well within its discretion and should be sustained.

It would serve no useful purpose to repeat the testimony of each of the more than eight hundred and twenty-four supporting witnesses from the Southwest, Middle Atlantic, New England and Midwest States who testified on behalf of the

applicants.[8/] Their criticism of the performance--or nonperformance--of services by existing carriers is summarized by the Commission, in detail, in its decision (Herrin, Appendix E). It is sufficient to note that there is ample evidence of record showing a need for additional single line service.

Inter alia, the public witnesses testified to the following types of deficiencies in getting goods to market:

(1) The major complaint of the supporting shippers concerned transit time. About 650 shippers testified to this inadequacy and more than 200 introduced transit times studies demonstrating the undependable service.

8/ The testimony of witnesses who supported only the Roadway application was not considered at all. The testimony of those who supported Floyd and Beasley, alone, was considered, although not specifically discussed by the Commission, nor included within the 824 witnesses listed in Appendix E, Herrin, 114 M.C.C. at 591-92. The breakdown, by Region and States, of the number of witnesses who testified is as follows, id. at 592:

Southwest:	Arkansas	84	Southeast:	Alabama	84
	Colorado	6		Florida	15
	Louisiana	84		Georgia	114
	New Mexico	1		Kentucky	1
	Oklahoma	32		Mississippi	54
	Texas	375		N. Carolina	25
				S. Carolina	25
Midwest:	Kansas	15		Tennessee	17
	Missouri	27		Virginia	5

Middle Atlantic and New England:

Connecticut	4
Delaware	1
Maryland	3
Massachusetts	8
New Hampshire	1
New Jersey	9
New York	5
Pennsylvania	9
Rhode Island	4

Herrin, 114 M.C.C. at 596.

(2) About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic--particularly small shipments. 114 M.C.C. at 596-97.

(3) Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight. 114 M.C.C. at 597.

(4) Interline problems (which would be reduced by the single line grants authorized herein) were the subject of complaints from 110 shippers. About 200 witnesses described loss, damage, tracing and misrouting incidents, much of which occurred in interline service. 114 M.C.C. at 597.

(5) In addition to predictable adverse effects that inadequate service had upon the shippers--i.e.: loss of discounts or profits--80 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 597-98.

Those facts speak for themselves and, we find, they meet the test of substantial evidence, as that term is used in the Administrative Procedure Act, 5 U.S.C. 706(2)(E), of a need for additional service. We turn now to plaintiffs' argument that the Commission did not apply appropriate standards to the evidence of record.

We preface this discussion by observing that the issues before the Commission were varied and complex and required a de novo application of the Commission's expert

judgment, experience and knowledge of transportation matters. The issues before the Court are narrower. It is not the function of the Court to weigh the evidence anew or substitute its judgment in place of the Commission. "It is the exclusive province of the Commission to make findings of fact, to draw legitimate inferences therefrom, and to evaluate and determine the weight to be given conflicting evidence." Braswell Motor Freight Lines, Inc. v. United States, supra, 275 F. Supp. at 102. The pervasive feature of plaintiffs' dissatisfaction with the Commission's decision is their disagreement with the evaluation and weight given the evidence.

For example, plaintiffs contend that the Commission applied an improper standard in evaluating the evidence and making evidentiary findings. They call this improper standard a "Monday-Tuesday" rule (i.e., one rule for one party and a different rule for another), which they say was employed by the Commission for the benefit of the successful applicants and to the detriment of plaintiffs. But plaintiffs, in leveling their "Monday-Tuesday" charge at the Commission's evaluation of transit times studies, cite no rule of general application which was denied to them.

Plaintiffs direct their charge primarily at the Commission's evaluation of the evidence concerning transit time studies. "Transit time" refers to the amount of time required to move the goods from origin to destination. Its importance to shippers is obvious, and often has a great bearing on the issue of whether service is in fact adequate to meet their needs. Here transit time studies were introduced both by the applicants and their supporting shippers and by the plaintiffs.

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The Commission gave careful consideration to those studies and measured them in comparison to each other. In regard to the transit times studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 596:

> The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving.

In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications. Herrin, 114 M.C.C. at 599.

In essence, the Commission found that the transit times studies of the 14 protestants generally relate to short periods of time and were made when protestants were confronted with the possibility of additional competition. Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, this Court concludes that the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419; Braswell Motor Freight Lines, Inc. v. United States, 100 M.C.C. 482, sustained sub nom. Dixie Highway Express,

Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).[9/]

Plaintiffs' further charge that the Commission "ignored" their studies is plainly without merit, since such studies were explicitly discussed by the Commission (Herrin, 114 M.C.C. at 599). In any event, it is well settled that the failure to discuss specific items of evidence is not tantamount to "ignoring" that evidence. Columbia Transportation Co. v. United States, 167 F. Supp. 1, 15 (E.D. Mich. 1958).

Moreover, the transit times studies was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. Among other inadequacies, the Commission--focusing on the problems of small shipments--found that many of the shippers were confronted with interline difficulties, carrier restrictions or embargoes which limit the service available.[10/] These findings are supported by substantial evidence, and afford additional support for the grants of authority here authorized.[11/]

9/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also initially rejected by that Court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

10/ Herrin, 114 M.C.C. at 600.

11/ Plaintiffs also assert that the Commission erred in granting leave to intervene to 41 supporting shippers subsequent to the examiners' report without awaiting plaintiffs' replies. But Rule 72(d) of the Commission's General Rules of Practice, 49 C.F.R. 1100.72, expressly provides:

> In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

And, in any event, plaintiffs have failed to demonstrate how they suffered any harm through the intervention of the supporting shippers, all of whom had testified earlier at the hearings.

Plaintiffs' contention that the Commission erred in refusing to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers is without merit, since the decision reveals that the Commission did consider these matters. The Commission not only made frequent text and footnote references to those changes,[12/] and specifically referred to a request made by certain protestants that it take official notice of those changes,[13/] it also distinctly said (Herrin, 114 M.C.C. at 576) that it took official notice of those changes which took place since the close of the hearings, including changes affecting carriers not parties to the proceeding. Moreover, the Commission demonstrated its consideration of the changes by limiting the quantum of motor carrier service it authorized to three of the remaining nine applicants in the proceeding. Nothing more was required.

Plaintiffs further complain of the fact that, as a result of the Commission's decision, they will be faced with additional competition. But the Commission could reasonably conclude that the additional competition would be in the public intrest, even though as a result plaintiffs may lose some traffic to their competitors. United States v. Dixie Highway Express, Inc., 389 U.S. 409, 411-12 (1967); Carolina Freight Carrier Corp. v. United States, 297 F. Supp 818, 852 (W.D. N.C. 1969); Atlanta-New Orleans Motor Freight

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12/ Eg., Herrin, 114 M.C.C. at 574, 575, 578, 585, 586, 600, 611, 627, 631, 635, 759, 762, 764, 771, 772, 773, 77, 779, 782, 784, 792.

13/ Id., at 631.

Co. v. United States, 197 F. Supp. 364 (N.D. Ga. 1961); Arlington, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd per curiam, 340 U.S. 802. As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra, 197 F. Supp. at 370:

> this, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D. Va., 96 F. Supp. 756, 761 affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 94 L.Ed. 590, remarked "Competition among public carriers may be in the public interest and the carrier first in the business has no immunity against future competition [citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity, may be served by the issuance of a certificate to a new competitor."

Plaintiffs also assert error in the Commission's denial of A-BF's petition to reconsider and reopen the Bowman applications. But it is a well settled principle that petitions for reconsideration or reopening are addressed to the sound discretion of the Commission and that the denial of those petitions will be reversed only for clear abuse of discretion. United States v. Pierce Auto Freight Lines, supra; Interstate Commerce Commission v. Jersey City, 322 U.S. 503 (1943). In the latter case Mr. Justice Jackson, speaking for the Court observed:

> [it] has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that the discretion to be invoked was that of the body making theorder, and not that of a reviewing body.

Summary denial of such a petition is appropriate and further findings and conclusions are unnecessary if it is clear that the Commission gave due consideration to the petition. Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp 894 (D. Col. 1963). Here there is no showing that the Commission abused its discretion in denying A-BF's petition.

The petition to re-open were directed solely to the Bowman service to Montgomery, Alabama. In its decision, the Commission had found that despite Bowman's manifest intent to utilize Montgomery, Alabama, as a gateway, and the showing of public need for that service, Bowman's application was defective in giving notice of such intent. Therefore, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. A-BF and several other carriers who were not parties to the Bowman proceeding[14/] thereupon filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. All such petitions were denied or rejected, but only A-BF, of those who filed such petitions, is a party to this action

Since A-BF holds no authority to serve Montgomery, it is difficult to see how it could have been prejudiced

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14/ A-BF had originally filed a protest to the Bowman application, but voluntarily withdrew its protest near the end of the oral hearing. (Tr. 19, 809, June 15, 1967).

by the Montgomery grant, and the Commission's denial of its petition was clearly within its discretion. In fact, A-BF's petition reveals that it was not really concerned with the Montgomery grant, but its petition to reopen was bottomed on the contention that A-BF could not have known until republication that Bowman would be able to tack[15/] the rights granted herein to certain operating authorities which Bowman obtained by purchase from Alabama Highway Express in October, 1968.[16/] This contention in turn is based on the theory that Bowman's application, as originally published in the Federal Register in 1965, stating that applicant intends to tack the proposed routes with authority previously granted, amounted in effect to a restriction against tacking with after-acquired rights. But, in view of the Commission's long-established policy not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown (Fox-Smythe Transportation Co. Extension--Oklahoma, 106 M.C.C. 1, 18 (1967), this court is persuaded that the language of the Bowman application cannot reasonably be construed to be a restriction against tacking with after-acquired authorities. Since reasonable notice of the intention to tack with all authorities was given by the original Federal Register publications, A-BF had notice from the beginning of that intention and no need for reopening was shown. Compare Federal Crop Ins. Co. v. Merrill, 332 U.S. 380, 385 (1949); Yakus v. United States, 321 U.S. 414, 425 (1944).

15/"Tacking" means a carriers ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

16/Notice of the filing of this application in Docket No. MC-F-9921, Bowman Transportation, Inc.--Purchase (Portion)--Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. 32 F.R. 15141. There was a republication, showing additional authority be granted, in the Federal Register on June 19, 1968. 33 FR 9051.

Finally, there is no merit to plaintiffs' attack upon the Commission's "re-statement" of the facts found by the examiners. The agency's right to re-state the evidence in form reflecting its pattern of analysis is confirmed by Section 8(a) of the Administrative Procedure Act, 5 U.S.C. §557(b), which provides, as pertinent:

> On appeal from a review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

Plaintiffs' claim that the certain language of Rule 96 of the Commission's Rules of Practice, 49 C.F.R. §1100.96, is a "limitation" on the Commission's powers, within the meaning of the Administrative Procedure Act is of no validity. The pertinent part of Rule 96 provides:

> (a) Generally. Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relief upon to support the exception and a corrected statement must be incorporated.

To begin with, it is well established that the "clearly erroneous" rule of the Federal Rules of Civil Procedure, 52(a), applicable to courts is not applicable to an agency's review of examiners' reports. Universal Camera Corp. v. N.L.R.B., supra; F.C.C. v. Allentown Broadcasting Corp., 349 U.S. 358 (1954). Any departure from that practice, statutorily, let alone by rule, must be explicit. F.C.C. v. Allentown Broadcasting Corp., supra, 349 U.S. at 364.

Rule 96(a) does not on its face limit the Commission's powers on review and cannot be said to have the degree of "explicitness" required for such limitation. Moreover, the rule which follows in the General Rules of Practice, Rule 97, concerning the "effect of exceptions or absence thereof" establishes that Rule 96 does not relegate the Commission to the role of sustaining those findings in the absence of objection. 17/ Thus Rule 96 is a procedural rule designed to facilitate the development of relevant information for the Commission's use in reviewing initial decisions. As its companion rule (Rule 97) vividly demonstrates, Rule 96 was not intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion. See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532 (1970).

In sum, it is the conclusion of the Court that the decision of the Commission is supported by substantial evidence, and its procedural handling of the case was well written in its discretion.

17/ Rule 97 (49 CFR 1100.97) provides:

> Rule 97 -- Effect of exceptions or absence thereof.
>
> (a) Upon report and recommended order. The filing of exceptions to a recommended order operates to stay the effectiveness of the order and thereafter decision by the Commission will be made in due course. If no exception is filed to the recommended order and the Commission does not stay it, the recommended order becomes the order of the Commission upon expiration of the period of filing exceptions provided in Rule 96(b), or any postponement of such period, or postponement of the effective date of such order, and a notice stating that the recommended order has, giving the date, become the order of the Commission will be mailed to the parties by the Commission.
>
> (b) Upon proposed report. A proposed report will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertained error the officer's statement of the issues and of the facts ordinarily will be taken by the Commission as the basis of its decision. (emphasis supplied)

Accordingly, the orders of the Commission are affirmed and an order will be entered dismissing the plaintiffs' complaint and dissolving the temporary restraining order previously issued.

United States Circuit Judge

United States District Judge

United States District Judge

CERTIFICATE OF SERVICE

I hefeby certify that on this, the 10th day of August, 1973 I served true copies of the foregoing Joint Proposed Findings of Fact and Conclusions of Law on counsel for all parties of record by first-class, airmail, postage prepaid.

SEYMOUR GLANZER
Attorney

APPENDIX I

CHRONOLOGICAL SEQUENCE OF FILING OF
THE APPLICATIONS HEARD ON THE
CONSOLIDATED RECORD HEREIN

1. December 7, 1964
Roadway Express, Inc. (Roadway)
No. MC-2202 (Sub-No. 273)

2. March 23, 1965
Johnson Motor Lines, Inc. (Johnson)
No. MC-106401 (Sub-No. 16)

3. May 17, 1965
Red Ball Motor Freight, Inc. (Red Ball)
No. MC-2229 (Sub-No. 132)

4. May 18, 1965
Floyd & Beasley Transfer Company, Inc. (Floyd & Beasley)
No. MC-18088 (Sub-No. 36)

5. May 28, 1965
Deaton, Inc. (Deaton)
No. MC-11207 (Sub-No. 203)

6. June 14, 1965
Jones Truck Lines, Inc. (Jones)
No. MC-111231 (Sub-No. 67)

7. June 16, 1965
Strickland Transportation Co., Inc. (Strickland)
No. MC-59680 (Sub-No. 147)

8. June 18, 1965
Herrin Transportation Company (Herrin)
No. MC-1124 (Sub-No. 206)

9. July 12, 1965
Bowman (Bowman)
No. MC-94201 (Sub-No. 56)

10. July 30, 1965
Baggett Transportation Company (Baggett)
No. MC-76177 (Sub-No. 304)

APPENDIX II

NUMBER OF PUBLIC WITNESSES WHO TESTIFIED IN SUPPORT OF APPLICATIONS*

Carrier	Witness Support
Herrin	116
Roadway	123
Red Ball	171
Deaton	58
Floyd & Beasley	41
Strickland	134
Baggett	52
Bowman	363
Johnson	256
Jones	222

* Ex. Rept. 4

APPENDIX IV

DISPOSITION OF THE TEN APPLICATIONS
NOT SELECTED FOR CONSOLIDATION

APPLICATION	DISPOSITION
Braswell (Sub-No. 17) Red Ball (Sub-No. 131)	Granted 112 M.C.C. 558 (1970)
Denton (Sub-No. 232) Cole/Dixie (Sub-No. 96)	Denied 106 M.C.C. 792 (1968)
Campbell (Sub-No. 106)	Granted with conditions 108 M.C.C. 80 (1968)
Mercury Freight (Sub-No. 11) Mercury Freight (Sub-No. 12)	Granted 1966 and 1968 (Not Printed)
Thurston (Sub-No. 54)	Granted 105 M.C.C. 586 (1967)
Gordons (Sub-No. 94) Dixie Ohio (Sub-No. 62)	Dismissed by Applicants (1966)

APPENDIX III

PROFILE OF PLAINTIFFS AND THE APPLICATIONS THEY OPPOSED 1/

Plaintiffs 2/	SUCCESSFUL APPLICANTS			OTHER APPLICANTS						
	Red Ball MC-2229 (Sub-No. 132)	Bowman MC-96201 (Sub-No. 56)	Johnson MC-106401 (Sub-No. 18)	Herrin 2/ MC-1124 (Sub-No. 206)	Deaton MC-11207 (Sub-No. 233)	Strickland MC-59681 (Sub-No. 147)	Bennett MC-76177 (Sub-No. 306)	Jones MC-111231 (Sub-No. 67)	Floyd & Beasley MC-140688 (Sub-No. 16)	[illegible] (Sub-No. [illegible])
Arkansas-Best Freight System, Inc. (A-BF)		4/								
Mercury Motors, Incorporated (Mercury Motors)		X			X	X				
Alamo Express, Inc., (Alamo)	X	X	X	X	X	X	X			X
Braswell Motor Freight Line, Inc. (Braswell)		X			X	X	X	X	X	
Campbell Sixty-Six Express, Inc. (Campbell) 3/	X	X	X	X	X	X	X	X	X	X
Central Freight Lines, Inc. (Central)		4/								
ET & WNC Transportation Company (ET & WNC)		X	X	X	X	X	X	X	X	X
Eagle Motor Lines, Inc. (Eagle)		X	X		X	X	X			
Gordons Transports, Inc. (Gordons)		X			X	X	X	X	X	X
Holloway Motor Express, Inc. (Holloway)	X	X			X		X			
Mercury Freight Lines, Inc. (Mercury Freight)		X	X				X			
Red Arrow Freight Lines, Inc. (Red Arrow)	X	X		X			X			
Red Line Transfer & Storage Company, Inc. (Red Line)		X	X		X	X		X	X	X
T.I.M.E.-DC, Inc. (T.I.M.E.)	X	X		X			X			
Transcon Lines (Transcon)	X	X			X	X		X	X	
Yellow Freight System, Inc. (Yellow) 3/	X	X			X	X	X			X
Bowman Express, Inc.		X	X				X	X	X	
Roadway Express, Inc. of Mississippi } Roadway 5/	X	X		X	X	X	X			X
Jack Cole-Dixie Highway Company (Jack Cole-Dixie)	X	X	X	X	X	X	X	X	X	X

1/ The primary source for the profile is Herrin, Appendix C, 114 M.C.C. at 757-794.

2/ McLean Trucking Company was substituted for Herrin. Herrin 114 M.C.C. 571.

3/ In some instances, the protests involved only a portion of the application opposed.

4/ A-B-F filed a protest to Bowman's application which it withdrew before the close of the oral hearing. TR 19,809. Its petition for leave to intervene, etc., filed March 27, 1972 was denied by order of Division 1, Acting as an Appellate Division, September 1, 1972.

5/ The operations of United Motor Freight Terminal, Inc. (United) were merged into Campbell. Herrin 114 M.C.C. at 777. United's protests are treated as Campbell's whether or not the two are duplicative.

6/ Campbell withdrew its protest to Bowman subsequent to the hearing. Herrin 114 M.C.C. at 776.

7/ Watson-Wilson Transportation System, Inc. (Watson-Wilson) was merged into Yellow. Herrin 114 M.C.C. at 784. Yellow's interest is derived from Watson-Wilson.

8/ Roadway obtained control of West Brothers, Inc. (West). Herrin 114 M.C.C. at 782. West's protests (except its protest of Roadway) are treated as Roadway's whether or not the two are duplicative.

APPENDIX G

Proposed Opinion, Findings of Fact and Conclusions of Law submitted by defendants, Red Ball Motor Freight, Inc., Johnson Motor Lines, Inc. and Lorch-Westway Corporation, et al, filed August 13, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

* * * * *

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL., Plaintiffs,	:)	
V.	:)	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,	:)	
and	:)	Civil Action No. FS-72-C-65
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORPORATION, ET AL., Intervening Defendants.	:)	

* * * * *

PROPOSED OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW OF DEFENDANTS RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

In this action commenced October 4, 1972, 18 plaintiffs[1/] seek to set aside and annul orders of the Interstate Commerce Commission (I.C.C.) awarding certificates of public convenience and necessity to three motor carriers, Red Ball Motor Freight, Inc. of Dallas, Tex., Johnson Motor Lines, Inc. of Charlotte, N.C., and Bowman Transportation Inc. of Birmingham, Ala. The challenged orders were entered by the Commission on December 30, 1971, and September 6, 1972, in a proceeding styled Herrin Transportation Company Extension - Atlanta, Ga., 114 M.C.C. 571 (1971).

1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., LT&NC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc., and Jack Cole/Dixie Highway Company. Roadway and Cole/Dixie were permitted to intervene as plaintiffs after the filing of the complaint.

This court has jurisdiction of the subject matter and of the parties under 49 U.S.C.A. §§ 17(9), 305(g); 28 U.S.C.A. §§ 1336, 1398, 2321, 2325, and 2284.

Plaintiffs are motor carriers which opposed one or more of the successful applications before the Commission.[2] The named defendants are the United States of America and the Interstate Commerce Commission. The three successful applicants, together with 41 shippers (Lorch-Westway Corp., et al.) supporting the Johnson application before the agency, were authorized by the court to intervene as defendants.

On November 7, 1972, following oral argument, Judge John E. Miller entered an order restraining the Commission from implementing the assailed orders pending a hearing and determination of the merits of the action. Arkansas-Best Freight System, Inc., et al. v. United States, et al., 350 F. Supp. 539. The case was submitted for determination by the three-judge court on July 24, 1972, upon the pleadings, the agency record, and the extensive briefs of the parties.[3]

The Agency Proceeding

The proceeding before the Commission was commenced by the filing of a certificate application by Roadway Express, Inc., on December 7, 1964. Thereafter, during the spring and summer of 1965, 19 other motor carriers filed applications seeking certificates

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2/ Venue plaintiff Arkansas-Best Freight System did not participate in the agency proceeding in opposition to these applications. It participates in this action solely to challenge the Commission's denial of its post decision request to intervene in and rehear the Bowman application. Venue plaintiff Mercury Motors opposed only the Bowman application.

3/ On July 24, 1972, the court, following oral argument, also denied plaintiffs' motion, under F.R.Civ. P. 15(d), to file a supplemental complaint challenging the Commission's final order awarding a certificate in Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586 (1972).

authorizing general commodity operations between points in the southeast and southwest. Pursuant to the Commission's rules of practice, notice of the applications was published in the Federal Register and thereafter they were protested by multiple opposing carriers. As a result of a prehearing conference held on September 9, 1965, ten of the applications were consolidated for hearing and ten were processed separately. The ten applications heard on the consolidated record are identified below; the Commission's disposition of the other ten is noted in the margin: 4/

Applicant	I.C.C. Docket No.	Date Filed
Roadway Express, Inc.	MC-2202 (Sub-No. 273)	12/7/64
Johnson Motor Lines, Inc.	MC-106401 (Sub-No. 13)	3/23/65
Red Ball Motor Freight, Inc.	MC-22229 (Sub-No. 132)	5/17/65
Floyd & Beasley Transfer Company, Inc.	MC-18088 (Sub-No. 36)	5/18/65
Deaton, Inc.	MC-11207 (Sub-No. 233)	5/28/65
Jones Truck Lines, Inc.	MC-11123I (Sub-No. 67)	6/14/65
Strickland Transportation Co., Inc.	MC-59[illegible]0 (Sub-No. 147)	6/16/65
Herrin Transportation Company, Inc.	MC-1124 (Sub-No. 200)	6/18/65
Bowman Transportation, Inc.	MC-94201 (Sub-No. 56)	7/12/65
Baggett Transportation Company	MC-76177 (Sub-No. 304)	7/30/65

The territorial scope of the consolidated applications varied in accordance with the existing authorities of the ten applicants and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories by area. Four southwestern-based applicants, Red Ball, Herrin, Strickland, and Jones, sought to extend their operations to the southeast. Five southeastern-domiciled applicants, Johnson, Bowman, Floyd & Beasley, Deaton, and Baggett, sought to obtain authority to the southwest. 5/

4/ Four of the separately processed applications were granted in Braswell Motor Freight Lines, Inc., Extension - Between Houston, Tex., and New Orleans, La., 112 M.C.C. 558 (1970); Campbell Sixty-Six Express, Inc., Extension - Atlanta, 108 M.C.C. 80 (1968); and Thurston Motor Lines, Inc. - Charlotte Gateway, 105 M.C.C. 536 (1967). Two applications of Mercury Freight were granted in 1966 and 1967 in unreported decisions. The applications of Cole/Dixie and Deaton were denied in West Brothers, Inc., Extension - Baton Rouge, La., 106 M.C.C. 792 (1968). The applications of Gordons and Dixie Ohio were dismissed in 1966.

5/ Roadway's status and application were somewhat different in that it already operated in both the southeast and southwest, but sought to extend its operations from Montgomery, Ala., to Baton Rouge, La., via Pensacola, Fla., and New Orleans, La.

The Commission assigned two hearing examiners (now administrative law judges) to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about 18 months extending from March 1966 to August 1967. Nine-hundred and fifty witnesses testified on behalf of the applicants. Of that number, 933 public witnesses, shippers, and receivers gave evidence in support of one or more of the applications. Evidence in support of 48 active protestants was offered by 62 witnesses. 6/

Simultaneous post-hearing briefs, including abstracts of the evidence, were filed by the parties. On November 19, 1969, the examiner served their report and recommended order finding all of the applicants "capable of performing the operations proposed," but recommending denial of all applications. Exceptions to the examiners' report were filed by eight applicants, including Johnson, Bowman, and Red Ball, and by 41 shippers, Lorch-Westway, et al., who were permitted to intervene in support of the Johnson application. Replies to those exceptions were filed by the protestants. On or about August 1, 1970, the case was submitted for the decision of the Commission, Division 1.

In a 225-page unanimous decision and order entered December 3 1971, the Commission, Division 1, concluded that the applications of Red Ball, Johnson, and Bowman should be granted. It found:

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."
> 114 M.C.C. at 599.

6/ The agency record, described by the Commission as perhaps the most extensive ever developed in a case of this kind, consists of 1,989 exhibits, many several hundred pages in length, and a hearing transcript numbering 23,423 pages.

It then summarized the reasons for its ultimate finding:

> "Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicant's proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings." 114 M.C.C. at 599-600.

Petitions for reconsideration and other pleadings seeking changes in the December 30, 1971, decision were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September 6, 1972, the Commission's Division 1, acting as an Appellate Division, denied or rejected all petitions relevant to the Johnson, Bowman, and Red Ball cases, and these three certificate awards became administratively final and ripe for judicial review.

On September 21, 1972, protestants then ... petitions pursuant to I.C.C. General Practice Rule 101(a)(4) requesting the Commission to reconsider and announce that the proceeding involved an issue of general transportation importance. These petitions, somewhat similar in nature to a litigant's request for rehearing en banc, were denied by the entire Commission by a vote of 6 - 3.

Issues Before This Court

We read plaintiffs' pleadings to contain four broad challenges to the Commission's decision:

(1) Whether the Commission properly decided the case differently than recommended by the hearing examiners.

(2) Whether the Commission's decision granting the certificates is supported by substantial evidence.

(3) Whether the Commission acted arbitrarily and capriciously in the weight it accorded certain evidence.

(4) Whether plaintiffs, or any of them, were denied due process.

Scope of Judicial Review

The Commission decision is before the court under well-established principles of a limited scope of review. That decision will be sustained if it is within the agency's statutory powers and is based on appropriate findings which, in turn, are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 619-621 (1966);

Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 488 (1951); United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515, 535-536 (1946). In Consolo, supra, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." 383 U.S. at 620.

When the Commission's decision is supported by substantial evidence on the record, that decision must be affirmed even though this court might reach a different conclusion if it were hearing the case de novo as a civil proceeding. Thus, in Texas Mexican Ry. Co. v. United States, 250 F. Supp. 946 (S.D. Tex. 1966), a three-judge court review of an I.C.C. decision, the court stated this rule:

> "The conclusion of the Commission finds support in the record as a whole, even though we might justifiably have made a different choice had the matter been before us de novo; and, therefore, this Court may not set the order aside."
> 250 F. Supp. at 950.

This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (W.D. Ark. 1966); Reddish v. United States, 189 F. Supp. 160 (W.D. Ark. 1960), aff'd sub nom., Interstate Commerce Commission v. v. J-T Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 178 F. Supp. 771 (W.D. Ark. 1959). In Patterson, Judge Miller held:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. [Citations omitted.]
>
> * * *
>
> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its actions.' [Citations omitted.]
>
> * * *

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."
> 178 F. Supp. at 773-774.

In defining substantial evidence in Superior Trucking Company, Inc. v. United States, 306 F. Supp. 872 (N.D. Ga. 1969), the court said:

> "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. . . . Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L. Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence *** must do more than create a suspicion of the existence of the fact to be established. *** [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S. Ct. 501, 505, 83 L.Ed. 660 (1939)."
> 306 F. Supp. at 875.

In Curtis, Inc. v. United States, 327 F. Supp. 291 (D. Col. 1971), the court explained what does not render evidence insubstantial:

> "A review of the extensive record in this case does indeed reveal that the Commission had before it substantial evidence upon which to predicate its actions. Plaintiff attempts to refute the findings of the Hearing Examiner (subsequently adopted by the Commission) witness by witness (and there were over 60 witnesses). However, in almost every instance these attempts amount to efforts to equate controverted or disputed evidence on behalf of the applicants before the Commission with insubstantial evidence. This cannot be done."
> 327 F. Supp. at 294. (Emphasis added.)

This limited scope of review is particularly appropriate when as here, plaintiffs are attacking the exercise of the Commission's authority in the specific area of public convenience and necessity. The scope of the certificates which should be granted entails not only a weighing of the evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 478-4[illegible] (1942). Compare Andrew G. Nelson, Inc. v. United States, 355 U.S. 5[illegible]

558 (1958); United States v. Maher, 307 U.S. 148, 154 (1939). See also, Atlanta- New Orleans Freight Co. v. United States, 155 F. Supp. 68 (N.D. Ga. 1953), where the court made reference to the applicable standards in the following language:

> "In cases such as this 'the Commission, through the application of its expert judgment and experience in, and knowledge of, interstate transportation matters, is the final arbiter upon whether or not additional motor carrier service is required. Public transportation is not something that can belong to an applicant. It is established and determined by proof of conditions which exist in the territory to be served.' Wales v. United States, 108 F. Supp. 928, at page 933." 155 F. Supp. at 74.

Accord: Illinois Central R.R. Co. v. Norfolk & W. Ry. Co., 385 U.S. 57, 66 (1966); United States v. Pierce Auto Freight Lines, 327 U.S. 515, 535-536 (1946); Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945); United States v. Detroit & Cleveland Navigation Co., 326 U.S. 236, 241 (1945).

In short, there is a presumption that an administrative agency has properly performed its official duties in the absence of clear evidence to the contrary. Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968); Interstate Commerce Commission v. City of Jersey City, 322 U.S. 503, 512-513 (1944). The judicial function is exhausted when there is found to be a rational basis for the action taken by the agency. Mississippi Valley Barge Line Co. v. United States, 292 U.S. 282, 286-287 (1934).

Did the Commission Properly Decide the Case Differently Than Recommended by the Hearing Examiners?

In a report containing 38 pages of text and 275 pages of appendices, the hearing examiners concluded that all of the applications should be denied. In its decision of December 30, 1971, the Commission considered "[T]he evidence, the recommendations of the hearing examiners, and the pleadings" [114 M.C.C. at 575] and stated that "[o]ur conclusions differ in three of the embraced proceedings from those recommended by the

examiners." 114 M.C.C. at 574. As this court has stated, the Commission has the right, indeed duty, to make its own decision and in so doing to be free to accept or reject the recommendations of its examiners.

The hearing before the examiners was conducted as a contested proceeding on the record pursuant to 49 U.S.C. §§ 305(c), (d), and (e). Minneapolis & St. L. Ry. v. United States, 361 U.S. 173, 192 (1959). The report of the examiners was solely an initial decision pursuant to 5 U.S.C. §§ 556 and 557. Under this statute, "[t]he Commission is not bound by the findings of the hearing officers and is free to reach conclusions upon the evidence contrary to those of its examiners." Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 554.

The relationship between the examiners and the Commission is not the same relationship which exists between the Commission and this court. The Commission exercises all of the authority conferred upon it by statute. It can properly substitute its own judgment for the judgment of the examiner and itself reach an initial decision. ". . . On appeal from or review of the initial decision [of the hearing examiner], the agency has all the powers which it would have in making the initial decision. . . ." 5 U.S.C § 557(b). "The Commission is not bound by the examiner's conclusions. Rather, the Commission is free to make its own independent determinations." Frozen Food Express, Inc. v. United States, 301 F. Supp. 1322, 1324 (N.D. Tex. 1969); see Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 544.

In Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 493 (1951), the Supreme Court established the rule that the examiner's decision is only part of the whole record which the court must review to determine if there is substantial evidence to support the Commission's decision. This holding was further explained in Federal Communications Commission v. Allentown Broadcasting Corp., 349 U.S. 358 (1955).

In that case the Supreme Court reversed a Court of Appeals decision which held that an examiner's findings could not be overruled by the agency unless there was a "'very substantial preponderance in the testimony as recorded.'" 349 U.S. at 360. The Supreme Court held that the F.C.C. could not be limited to the "clearly erroneous" rule embodied in Rule 52(a), Fed. R. Civ. P., when reversing decisions of the hearing examiner. The statute gives to the Commission, not to the examiner, the power to rule on the facts and the law. Therefore, the relevant inquiry for the courts is whether there is substantial evidence on the record as a whole to support the Commission's decision. 349 U.S. at 364-365.

In Lorain Journal Co. v. Federal Communications Commission, 351 F. 2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966), the petitioners complained that the F.C.C., in reversing the hearing examiner's findings, did not give sufficient weight to the examiner's decision. The court stated:

> "But their [examiners'] authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364, 75 S. Ct. 855, 99 L.Ed. 1147 (1955). The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance." 351 F. 2d at 828. (Emphasis added.)

Thus, the court held that it must sustain the Commission's decision if supported by substantial evidence, even though there was substantial evidence to support the examiner's decision. 351 F. 2d at 828.

Plaintiffs contend, however, that in this case the Commission was procedurally bound by the examiners' summary of the testimony of the public witnesses and their conclusions respecting that evidence because the exceptions filed by the applicants had failed to pinpoint defects in the examiners' summary. This contention is devoid of substance.

Appendix C of the examiners' report contained their summary of the testimony of the public witnesses. This summary was organized by the commodities shipped or received. The Commission did not adopt the examiners' Appendix C. Rather, it said:

> "The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis. We have accordingly restated the supporting evidence in appendix E to this report." 114 M.C.C. at 591.

Appendix E of the Commission's decision contained its own independent statement of the testimony of the public witnesses organized geographically by states. The testimony of 824 7/ witnesses was classified in Appendix E under five major headings: (1) Shipper location and commodities; (2) origins, destinations, volume, type, and frequency of traffic; (3) existing service utilized; (4) reasons for supporting applications; and (5) applications supported and remarks. This summary of evidence in Appendix E must then be read in conjunction with the Commission's discussion of that evidence at pages 591-598 of the report, under the heading "Supporting Evidence." It was by means of the Appendix E summary and the discussion at pages 591-598 that the Commission enters the "basic or essential findings" to support its ultimate conclusion that there is a public need for additional motor carrier service.

7/ "Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest, [footnote: "Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas."]; 340 shippers in the Southeast, 44, collectively, in the Middle Atlantic and New England States; and 42 in the Midwest." 114 M.C.C. at 592.

In view of the large number of public witnesses and the high volume of their evidence, we do not quarrel with the agency's organization of this material. Nor do we accept plaintiffs' contention that the Commission was prohibited by applicants' pleadings from doing what it did.

The exceptions to the examiners' report filed by applicants and Lorch-Westway, together with the replies thereto filed by the protestants-plaintiffs, are summarized in Appendix D to the Commission's report. 114 M.C.C. at 624-635. These pleadings are also discussed in the text of the decision. 114 M.C.C. at 574-575. These discussions by the Commission together with the court's independent perusal of the pleadings are persuasive that the applicants' exceptions and the replies thereto raised substantial issues respecting the accuracy and completeness of the examiners' summary of the public witness testimony and fully justified the Commission's restatement of it.

Is the Commission's Decision Supported by Substantial Evidence?

The Commission's decision granting the applications of Johnson, Bowman, and Red Ball is supported by substantial evidence. We recognize the deference accorded to Commission determinations of public convenience and necessity and explained our limited function in reviewing this decision. It is with these standards in mind that we here examine the Commission's findings and the evidence underlying them.

The Commission's approval of the three applications turned fundamentally upon three correlative findings. It found that the record as a whole showed widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the southwest and the southeast, eastern seaboard, and gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature. It also found that the available transportation service between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public. Finally, it found the evidence,

considered in its entirety, was convincing that the additional services of three of the applicants ". . . will serve a useful public purpose, responsive to a public demand and need." 114 M.C.C. at 599-602. These findings were premised on a number of interrelated subsidiary findings respecting public dissatisfaction with the existing transport system and the pressing public demand and need for the services proposed by the successful applicants.

The major problem facing the public witnesses was the excessive and erratic transit times experienced between pickup and delivery of their traffic. About 650 shippers testified to this inadequacy. More than 200 evidenced transit time studies demonstrating the undependable service.

About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic -- particularly small shipments. Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight.

Interline problems (which would be reduced by the single line grants authorized by the Commission) were the subject of complaints from 110 shippers. About 200 witnesses criticized loss, damage, tracing, and misrouting incidents, much of which occurred in interline service.

In addition to predictable adverse effects that inadequate service had upon the shippers -- i.e., loss of discounts or profits -- 80 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 596-598. The Commission therefore properly found that the supporting witnesses have shown a valid public need to additional motor carrier service. 114 M.C.C. at 600.

The Commission also found that the granting of all of the applications would be contrary to the public interest; that a compelling public demand and need exists for the services proposed by three applicants; and that the gains to be derived by the public from these three authorizations ". . . far outweigh any adverse effect . . . any protestant may experience." 114 M.C.C. at 601-602, 611. Plaintiffs challenge these

findings by reference to the examiners' findings that granting the ten applications would have a serious adverse effect upon the existing carrier service (Examiners Report, p. 20). But there is no valid comparison between the examiners' "impact" findings and those of the agency. The examiners lumped the effects on existing carriers of the granting of all ten applications in reaching their conclusion as to possible adverse effect, without making any analysis whatever of the impact, if any, of the granting of any individual application. The Commission, on the other hand, balanced the gains to the public against possible detriment to protestants from the granting of three applications. It found the scale to dip decidedly in favor of the public, notwithstanding the awards "will subject some of protestants' traffic to the possibility of diversion." 114 M.C.C. at 610-611.

Contrary to plaintiffs' view, the protection of existing carriers is not the overriding purpose of motor carrier regulation. Rather, the federal regulations attempt to develop, coordinate, and preserve a national transportation system adequate to meet the commercial needs of the country. (See "National Transportation Policy," 49 U.S.C. preceding § 1.) While protection of existing carriers is a consideration, that factor does not ipso facto bar the Commission from allowing new competition into the field. Petroleum Carriers Corporation v. United States, 258 F. Supp. 611, 615-616 (M.D. Fla. 1966).

The fact that plaintiffs will now have additional competitors is no reason to deny authority. As the Supreme Court stated in United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967):

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is

> of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v Drum, 368 US 370, 374, 7 L ed 2d 360, 363, 82 S Ct 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v Parker, 326 US 60, 70, 89 L ed 2051, 2062, 65 S Ct 1490 (1945); see Schaffer Transportation Co. v.United States, 355 US 83, 90-91, 2 L Ed 2d 117, 122, 123, 78 S Ct 173 (1957)." 389 U.S. at 411-412.

In a further decision in Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. N.Y. 1968), the court, per curiam, said:

> "But criticism of such treatment of said franchises did not properly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. [Footnote omitted.] A sound discretion in the exercise of a highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision. . . . There are numerous and very complex and complicated problems which must be considered and weighed and balanced against each other and decided for a proper determination by this administrative agency as to the existence vel non of any public need or necessity for a franchise to serve public transportation needs and requirements." 287 F. Supp. at 474-475.

To be sure, the Commission found that some plaintiffs may be disadvantaged and may lose some traffic as a result of these awards. 114 M.C.C. at 610-611. But having found the existing services wholly inadequate for the public's needs, the Commission then reasonably concluded that the additional competition offered would be in the public interest. The courts have long recognized a discretion in the Commission to find that additional competition would serve the public convenience and necessity. Chesapeake & O. Ry. Co. v. United States, 283 U.S. 35, 43 (1931); Superior Trucking Co. v. United States, supra, 306 F. Supp. at

876-877; Carolina Freight Carriers Corp. v. United States, 297 F. Supp. 848, 852 (W.D. N.C. 1969); Atlanta-New Orleans Motor Freight Co. v. United States, 197 F. Supp. 364, 369-370 (N.D. Ga. 1961); Alexandria, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd, 340 U.S. 802 (1950); Lang Transp. Corporation v. United States, 75 F. Supp. 915, 931 (S.D. Cal. 1948); A. B. & C. Motor Transp. Co. v. United States, 69 F. Supp. 166, 169 (D. Mass. 1946); Davidson Transfer & Storage Co. v. United States, 42 F. Supp. 215, 219 (E.D. Pa. 1942), aff'd, 317 U.S. 587 (1942). As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra:

> "[T]his, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D.Va., 96 F.Supp. 756, 761, affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 95 L.Ed. 590, remarked:
>
> > 'Competition among public carriers may be in the public interest and the carrier first in business has no immunity against future competition. [Citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity may be served by the issuance of a certificate to a new competitor.'"
>
> 197 F. Supp. at 370.

Did the Commission Act Arbitrarily and Capriciously in the Weight It Accorded Evidence by Different Parties?

The issues before the Commission were varied and complex and required a de novo application of the Commission's expert judgment, experience, and knowledge of transportation matters. The issues before this court are narrower. It is not our function to weigh the evidence anew or substitute or judgment for that of the Commission. "[I]t is the exclusive province of the Commission to make findings of fact, to draw

legitimate inferences therefrom, and to evaluate and determine the weight to be given conflicting evidence. Braswell Motor Freight Lines Inc. v. United States, 275 F. Supp. 98, 102 (W.D. Tex. 1967), aff'd, 389 U.S. 569 (1968), reh. den, 390 U.S. 975 (1968). The pervasive feature of plaintiffs' challenge to the Commission's decision is their disagreement with the evaluation and weight accorded evidence.

To lend color to these arguments plaintiffs first accuse the Commission of violating a so-called "Monday-Tuesday" principle stated the concurring opinion of Judge Brown in Mary Carter Paint Co. v. Fed Trade Commission, 333 F. 2d 654, 660) (5th Cir. 1964), rev'd, Federal Trade Commission v. Mary Carter Paint Co., 382 U.S. 46 (1965). In their reply brief plaintiffs shifted the pivot of this challenge to accusations that the Commission acted arbitrarily and capriciously an therefore without a rational basis in evaluating and weighing the evi At the heart of these accusations is plaintiffs' belief that they were treated unfairly by the Commission and that this unfair treatment is manifested in the way the Commission evaluated their evidence vis-a-v the weight it accorded the evidence of the public witnesses and the witnesses of the applicants.

Plaintiffs' arguments misconstrue the Commission's statutor function and duty in passing upon applications for certificates of p convenience and necessity. Their assertions are grounded on the faul premise that the Commission's function is to view its proceeding as a economic struggle betweer the applicants and the protestants. But th Commission's order under review by this court decided that the preser or future public convenience and necessity required the three authori tions and that, as the examiners also had held (Report, p.3), the successful applicants were fit, willing, and able to conduct the serv shown to be needed by the public. In short, the primary considerati before the agency was the interest of the public, not the relative economic advantages of the applicants and the protestants. Central Motor Lines, Inc. v. United States, 309 F. Supp. 336, 339 (M.D. N.C. 1969).

The function of weighing the evidence and drawing legitimate inferences therefrom is peculiarly within the Commission's discretionary powers. Consolo v. Federal Maritime Commission, supra; Alabama Highway Express, Inc. v. United States, 241 F. Supp. 290 (M.D. Ala. 1965), aff'd, 382 U.S. 106 (1965). The regulation of transportation involves various economic factors and the exercise of an empirical judgment since "The stuff of the process is fluid and changing - the resultant of factors that must be valued as well as weighed." Virginia Stage Lines v. United States, 48 F. Supp. 79, 83 (W.D. Va. 1942). The Commission's determination of the weight to be accorded evidence, so long as the basic facts find support in the record as a whole, will not be reversed on appeal "'even though the court would justifiably have made a different choice had the matter been before it de novo.'" C & H Transportation Co. v. United States, 249 F. Supp. 97, 98 (N.D. Tex. 1965). Finally, the Commission's decision contained all requisite "basic and essential" findings to support its ultimate conclusion that the public convenience and necessity requires the granting of three of the ten applications. The agency need do no more. As a three-judge district court stated in Columbia Transportation Co. v. United States, 167 F. Supp. 5 (E.D. Mich. 1958):

> "Plaintiffs assert that the Commission's Order ignored evidence offered by them, and recite evidence which they claim the Commission ignored. The fact that the Commission did not in its report discuss various portions of testimony offered by plaintiffs, and give its reasons why it did not accept such evidence as controlling its decision, does not, in our opinion, constitute ignoring that evidence. Inasmuch as the Commission's report contained ultimate facts which it found from the record, it cannot be said that the Commission ignored any evidence that was before it. Failure to give to evidence the weight claimed for it by a party does not amount to ignoring such evidence." 167 F. Supp. at 15.

These legal principles are dispositive of the bulk of plaintiffs' complaint to this court. The same also is true of certain important areas of evidence.

Transit Studies of
Shippers v. Plaintiffs

Approximately 650 shipper witnesses complained about inconsistent and excessive transit times experienced in their employment of the existing carriers. About 200 of these witnesses corroborated these complaints with studies of shipping documents showing the actual number of days their goods were in transit. In an effort to show the shippers' oral and documented complaints to be unjustified, 14 of the 46 protestants submitted studies of the transit times experienced on their own lines during specified time periods in 1966 and 1967, subsequent to the filing of the applications.

As noted in T.S.C. Motor Freight, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960) aff'd sub nom., 366 U.S. 419 (1961), transit time studies are the conventional type of evidence usually submitted to the Commission in proceedings of this kind and call for ". . . the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision." 181 F. Supp. at 791. The agency decision now before this court made abundantly clear that the Commission carefully weighed and balanced this conflicting evidence. It found the 200 public witness studies, taken collectively, to be ". ... representative of the service these shippers are and have been receiving." 114 M.C.C. at 596. It further found that the 14 protestants' studies, although demonstrating in certain instances expeditious service, not to present ". . . as valid a picture as those introduced by those witnesses supporting the applications." 114 M.C.C. at 599.

Substantial evidence of record supported the Commission's findings. We do not substitute our judgment for the Commission's exercise of informed reasoning on an evidentiary problem committed to its discretion. Indeed, in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, 491-498 (1966), a case participated in by many of the plaintiffs here, the Commission resolved the same evidentiary problem much the same way. In these circumstances we cannot agree with

plaintiffs that the Commission's resolution of this evidentiary problem here was arbitrary or capricious. Indeed, however paramount this transit time evidentiary problem was to plaintiffs, it was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. As we have previously stated, this finding was supported by substantial evidence of a wide variety of defects in the services of existing carriers, not the least of which involved ". . . embargoes which limit the service available or . . . outright refusals to handle . . . traffic." 114 M.C.C. at 600.

Official Notice of
Subsequent Events

At plaintiffs' request, the Commission officially noticed in excess of 20 changes which, during the course of this agency proceeding, had taken place in carrier operating authorities in the involved regions by reason of I.C.C. approvals of other certificate applications and consolidations and mergers. Some of these changes resulted from applications filed and processed by plaintiffs themselves during a period when they were fully aware of the pendency of this case and of the possibility that one or more of these applications would be granted.

It is not unusual in a lengthy administrative proceeding of this kind that changes occur in the transport system during the course of the case. In the sound exercise of its discretionary power, the Commission noticed these changes and gave them "full and careful consideration" in its determination. 114 M.C.C. at 576. Since the Commission is empowered to find a further need for service by the public without a specific finding of inadequate service by the existing transportation system and because plaintiffs have in no way shown that the Commission exercised its discretion in doing what they asked it to do, we cannot say the agency acted arbitrarily or capriciously. Dixie Highway Express, Inc. v. United States, 207 F. Supp. [illegible] (S.D. Miss. 1962); Interstate Commerce Commission v. City of Jersey [illegible], 322 U.S. at 512-513.

Ability of Applicants

Plaintiffs contend that the Commission irrationally accorded too much weight to evidence of inadequate service by protestants and too little to some defects in the operations of the applicants. Shipper complaints regarding the services of these defendants are de minimus when weighed against the overwhelming public support for their proposed single line service. Moreover, these complaints were directed to defendants' joint line transportation -- a problem cured by the single line carriage approved by the Commission.

When, as here, there is substantial evidence on the record as a whole of a public demand and need for granting the applications, a certificate award should not be withheld simply because protestants, acting in their own self-interest, point to a few flaws in the operations of the applicants. To do so would simply exasperate the plight of the shippers by maintaining the existing inadequate transport system in status quo while the protestants enjoy freedom from competition. Hence, the Commission has historically considered the public's need for improved transportation as a consideration overriding flaws in the operations of applicants. Cf. Garrison Contract Carrier Application, 53 M.C.C. 195 (1951); Garrison Fast Freight, Inc., Common Carrier Application, 67 M.C.C. 550 (1956); Antrim Thompson Contract Carrier Application, 53 M.C.C. 195 (1951); and Western Auto Transports, Inc., Extension - Trucks, 81 M.C.C. 71 (1959). More recently, in Spector Freight System, Inc., Extension, 111 M.C.C. 889 (1970), the needed certificate was granted notwithstanding the applicant's failure to render reasonably adequate and continuous service during certain past intervals. 111 M.C.C. at 892. Indeed, plaintiff Campbell was the recipient of a certificate despite abuse of its common carrier duty to serve [108 M.C.C. 80, 81-82 (1968)]. Protestant East Texas was granted new operating authority notwithstanding repeated and serious failures to accept shipments required to be transported by its existing certificate. East Texas Motor Freight Lines, Inc., Extension - Mississippi and Louisiana Points, 115 M.C.C. 122 (1972).

Of course, if the applicant's past conduct is of such a flagrantly unlawful character as to render it unfit to perform the proposed service, the Commission, weighing the needs of the public against the unfit operations, can and will deny the application. Cf. Joseph P. Trioli Extension - Brick, 53 M.C.C. 212 (1951), [knowing, willful, and unlawful operations over extended time period]; Barrett Common Carrier Application, 79 M.C.C. 753 (1959), [falsification of records to evade detection of unlawful operations]; and W. J. Dillner Transfer Co. Extension - Alloys, 91 M.C.C. 667 (1962), [noncompliance with an outstanding cease and desist order]. There is no evidence before the court upon which it can find the Commission erred in concluding these applicants are unfit to receive these awards. Indeed, plaintiffs neither urged such a finding before the Commission nor here suggested any agency error in concluding that Johnson, Bowman, and Red Ball are "financially and otherwise fit . . . properly to conduct the proposed services." 114 M.C.C. at 591.

Finally, plaintiffs argue that the agency paid too little heed to their claim that the applicants will not prospectively perform the expedited transport service proposed in their applications. This is a claim often pressed by protestants to certificate applications. Its resolution obviously calls for the exercise of experienced and expert agency judgment. Here, both the examiners and the Commission rejected plaintiffs' claim. The examiners specifically found the applicants to be ". . . capable of performing the operations proposed" (Report, p.13). The agency considered the question at length and found the challenge to be without merit. 114 M.C.C. at 611.

Was There a Denial of Due Process?

Intervening Shippers

Plaintiffs claim to have been denied due process when post-hearing leave to intervene was granted by the Commission to 41 shippers supporting the Johnson application. The petition for intervention by Lorch-Westway Corp. and 40 other shippers was filed with the Commission pursuant to Rule 72 of its General Rules of Practice on March 23, 1970, one day prior to the due date for filing exceptions to the hearing examiners' report. Attached to the petition for intervention were shippers' exceptions to that report. Pursuant to Rule 72(d),[8/] any reply in opposition "must be filed within twenty days," although the Commission, in its discretion, may grant or deny the motion before the 20 days have expired.

Pursuant to Rule 72(d), the Commission granted leave to intervene seven days after service of the petition. Shippers' exceptions which were filed with the petition were accepted nunc pro tunc and as timely filed.

Plaintiffs disputed the grant of intervention in a petition for reconsideration of that order, filed April 13, 1970, and again in their petition for reconsideration of the Division 1 decision, filed May 22, 1972. Opportunity to be heard on the intervention issue was afforded plaintiffs a third time in their reply briefs to the exceptions filed by the intervening shippers. These opportunities constitute due process. Inland Empire District Council v. Mills, 325 U.S. 697, 709-710 (1945).

8/ I.C.C. General Rules of Practice, Rule 72. 49 C.F.R. § 1100.72 (Supp. 1972). Intervention; petitions. "(d) Copies; service; replies. . . . Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies." (Emphasis added.)

The interest of these shippers in the Commission proceedings and in their review by this court cannot seriously be challenged under 28 U.S.C. § 2323 and Fed. Rules Civ. P. 24(a). Salem Transportation Co. v. United States, 43 F.R.D. 389, 390 (S.D. N.Y. 1967); United Transports, Inc. v. United States, 214 F. Supp. 34, 38 (W.D. Okla. 1962); see Brotherhood of R.R. Trainmen v. B. & O. R.R. Co., 331 U.S. 519, 530-531 (1947); Alexander Sprunt and Son v. United States, 281 U.S. 249, 255 (1930). Applicability of the antitrust laws to the administrative proceeding below, raised by one of several exceptions to the hearing examiners' report by the intervening shippers, was found unnecessary for consideration in reaching its decision by the Commission. 114 M.C.C. at 576-577. The issue was not raised as a substantive matter before this court. Moreover, many of the arguments of the intervening shippers, challenged by plaintiffs, were contained in supplemental exceptions rejected by the Commission. 114 M.C.C. at 577. In these circumstances it is difficult to conceive how plaintiffs were prejudiced by the shippers' participation in the Commission proceeding.

Denial of ABF's Petition to Reopen the Bowman Case

Arkansas-Best Freight System (ABF) urges that it was denied due process when the Commission rejected its post-decision petition to intervene in and to reconsider and reopen the Bowman application. The record shows that ABF protested the applications of Roadway and Bowman at the outset of these consolidated proceedings. However, at the time the case was decided by the Commission on December 30, 1971, ABF was no longer a party to the proceeding before the Commission. This resulted from the voluntary withdrawal of its protest to the Bowman application toward the end of the oral hearing, and the final denial of the Roadway application on March 24, 1970.

In its decision the Commission found that, despite Bowman's manifest intent to utilize Montgomery, Ala., as a gateway and the showing of public need for that service, Bowman's application was technically defective in giving notice of such intent. Therefore, pursuant to its normal practice in situations of this type, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. 114 M.C.C. at 611-612.'

In response to that republication, ABF and several other carriers who were not parties to the proceeding filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. ABF's petition sought each of those. All such petitions were denied or rejected.[9/] Only ABF, of those who filed such petitions, is a party to this action.

ABF cannot serve Montgomery. Therefore, it was not prejudiced by the grant to Bowman to serve Montgomery, and it had no standing in conflict with the matter necessitating republication. Nevertheless, it urges that the Commission erred in failing to reconsider the Bowman application in the light of facts other than those related to Montgomery. The argument is bottomed on the belief that ABF could not have known until republication that Bowman would be able to tack[10/] the rights granted herein to operating authorities acquired by applicant through purchase from Alabama Highway Express in October 1968.[11/]

9/ Order of the Commission, Division 1, acting as an Appellate Division, dated September 1, 1972, page 6.

10/ "Tacking" means a carrier's ability to join two or more grants of authority by the I.C.C. to provide service between points in one territorial grant and points in another territorial grant or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

11/ Notice of the filing of this application in Docket No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc., was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority to be granted, in the Federal Register on June 19, 1968.

Bowman's application, as originally published in the Federal Register in 1965, shows its intentions to tack the proposed routes with authority previously granted, is asserted by ABF to be a restriction against tacking with after-acquired rights. The Commission has not so construed similar restrictions. With respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co. Extension - Oklahoma, 106 M.C.C. 1, 18 (1967); Ruan Transport Corp. Extension - Ames, Iowa, 110 M.C.C. 389, 390-391 (1969);

Further, the examiners' report showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority sought herein (Report, App. A., p. 25). Yet, despite having actual notice of Bowman's intent from the time of receipt of the examiners' report, ABF said nothing about this matter and made no attempt to seek leave to intervene until more than two years had passed.

ABF did not participate in the Bowman/Alabama Highway purchase application even though it would have been appropriate for it to do so to determine Bowman's intent and to show any claimed material adverse effect which might result from tacking. Closely in point is Howard Hall Company, Inc. v. United States, 332 F. Supp. 1076 (N.D. Ala. 1971), where the court explained:

> "The case of Warren Transport, Inc. Extension—Dubuque to North Dakota, 98 M.C.C. 761 points out two basic principles concerning the tacking of common carrier authority: First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order

> to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension - Liquid Chemicals, 73 M.C.C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M.C.C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969)." 332 F. Supp. at 1082.

Thus, in the period August 1965 - November 1968, ABF, on at least three occasions received official notice that the Bowman route proposed in this case and the routes it acquired from Alabama Highway Express would be tacked. As it had no valid interest in the Bowman service at Montgomery, Ala., and because it knowingly sat silently too long, there is no abuse of the Commission's discretion in the denial of the March 27, 1972, petition. United States v. Pierce Auto Freight Lines, supra, 327 U.S. at 535-536; Interstate Commerce Commission v. City of Jersey City, supra, 322 U.S. at 512-513; Colorado-Arizona Express, Inc. v. United States, 224 F. Supp. 894, 901-902 (D. Colo. 1963); Pilot Freight Carriers, Inc. v. United States, 354 F. Supp. 222, 224 (M.D. N.C. 1972).

Commission Review Procedures

Plaintiffs generally complain that due process was denied by the Commission after the report by the hearing examiners. This denial is alleged to have occurred because the decision of the Commission was made solely by Division 1, consisting of three members, who voted unanimously to grant certificates to the three carrier defendants; because this decision was then reviewed by Division 1, acting as an appellate body, consisting of two of the original division members plus one other new member, who dissented; and because the entire Commission refused to review the proceeding as one involving a matter of general transportation importance.

The authority of Division 1 to issue the Commission's decision and to review that decision as an Appellate Division is, of course, statutory.[12/] The exercise of such a statutory function does not constitute denial of due process. Indeed, when a party has the opportunity to present its views in opposition to the Division 1 decision not once but twice, the requirements of due process have been met. Inland Empire District Council v. Mills, supra, 325 U.S. at 709-710. "The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. . . ." Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 152-153 (1941).

In Studna v. United States, 225 F. Supp. 973 (W.D. Mo. 1964), the plaintiff, as plaintiffs in this case, contended:

> ". . . that he was denied due process of law and his statutory rights because his petition for reconsideration of the Commission's decision was acted upon by the same Division that overruled the examiner's findings . . ., rather than by the entire eleven-man Commission or a separately constituted 'appellate division.' Plaintiff further contends that after Division No. 1 of the Commission (consisting of three members) ruled 2-1 that the Plan 2 operations were illegal, plaintiff was entitled to have his petition for reconsideration of this ruling heard by the entire eleven member Commission or at least a majority thereof.
>
> "Plaintiff contends that this cause should be remanded to the Commission for hearing on the petition for reconsideration by the full Commission or at least by six members thereof."
> 225 F. Supp. at 980.

The court rejected the argument:

> "Plaintiff's contention that the procedure outlined in Rule 1.101(a)(3) and followed by the Commission in this case violated due process is based upon the claim that an appeal to the very body which made the determination from which the appeal is taken is no appeal at all.
>
> "A similar contention was properly denied in A. B. & C. Motor Transportation Co. v. United States (D. Mass.) 151 F. Supp. 367, l. c. 371-372, in which the Court stated:

12/ 49 U.S.C. § 17, under which Division 1 decides cases of this kind. I.C.C. Organization of Divisions and Boards, etc., effective July 27, 1965, Vol. 2, F.Carr.Ces., Statute - Regulations, para. 13,002, et seq.

> 'The arguments are quite without substance. Motions or petitions for rehearing or reconsideration have time out of mind been addressed without thought of constitutional infirmity to the court or judge which, or who, decided the case in the first instance. We see no reason why applications of the same kind to a Commission cannot be similarly addressed.'"
> 225 F. Supp. at 981.

The agency decision now before this court became administratively final, for purposes of judicial review, when Division 1, acting as an Appellate Division, denied plaintiffs' petition for reconsideration. Transamerican Freight Lines, Inc. v. United States, 258 F. Supp. 910, 917 (D. Del. 1966). Plaintiffs' petition requesting the entire Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance[13/] did not affect the administrative finality of the Division 1 denial of the petition for reconsideration. That form of petition, and the discretion vested in the Commission with respect to its disposition, is similar to a petition for rehearing en banc addressed to a Circuit Court of Appeals. 28 U.S.C. § 46(c). "Whether the case will be reheard by the Court of Appeals after decision, and if reheard, by what particular judges, are matters entirely for the Court of Appeals itself." Bridges v. United States, 201 F. 2d 254, 255 (9th Cir. 1952). See Western P.R. Corp. v. Western P.R. Co., 345 U.S. 247, 262, 267-268 (1953).

Plaintiffs do not challenge the lack of a rule by the Commission, as was the case in Western, but rather the exercise of discretion under that rule. In exercising that discretion, the Commission gave plaintiffs "an opportunity to call [the entire Commission's] attention to circumstances in a particular case which might warrant a rehearing en banc" and, as was its usual practice, gave no specific reasons for denying the petition.

Due process and the applicable statute required no more.

13/ I.C.C. General Rules of Practice, Rule 101(a)(4), 49 C.F.R. § 1100.101(a)(4) (Supp. 1972).

Conclusion

There is no error. The order of the Commission should stand. The temporary restraining order is dissolved.

So ordered.

United States Circuit Judge

United States District Judge

United States District Judge

Certificate of Service

I hereby certify that I have this 11th day of August 1973, served a copy of the foregoing Proposed Opinion, Findings of Fact, and Conclusions of Law upon all attorneys of record by first class or air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas M. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1220 Baltimore
Kansas City, Missouri 64105

Robinson, Felts, Starnes & Nations
Post Office Box 2207
Austin, Texas 78767

Bethel B. Larey, Esq.
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Seymour Glanzer, Esq.
Interstate Commerce Commission
Washington, D. C. 20423

Maurice F. Bishop, Esq.
601-609 Frank Nelson Building
Birmingham, Alabama 35203

Jerry C. Prestridge, Esq.
Clark, Thomas, Denius, Winters & Shapiro
Post Office Box 1148
Austin, Texas 78767

Charles S. Rhyne, Esq.
Courts Oulahan, Esq.
Edward M. Huneke, Esq.
839 - 17th Street, N.W., Suite 400
Washington, D. C. 20006

Robert L. Jones, Jr., Esq.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

and that copies thereof have been air mailed to:

The Honorable Pat Mehaffy
United States Court of Appeals,
Eighth Circuit
Little Rock, Arkansas

The Honorable John E. Miller
Senior District Judge
United States District Court
Post Office Box 1525
Fort Smith, Arkansas 72901

The Honorable Paul X. Williams
United States District Court
Western District of Arkansas
Fort Smith, Arkansas 72901

Donald E. Cross

APPENDIX H

Proposed Findings of Fact, Conclusions of Law and Opinion submitted by Bowman Transportation, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas Corporation, et al,	)	
Plaintiffs,	)	
-v-	)	NO. FS-72-C-65
UNITED STATES OF AMERICA, et al,	)	
Defendants,	)	
and	)	
BOWMAN TRANSPORTATION, INC., et al,	)	
Intervenor-Defendants.	)	

O P I N I O N

This is an action, filed in this Court on October 4, 1972, by sixteen (16) motor carrier plaintiffs[1/] under 28 U.S.C.A. Sections 1336, 1398, 2321, 2325, 2284, seeking judicial review of an order of the Interstate Commerce Commission[2/] served January 24, 1972, styled Herrin

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1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Line, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc. and Jack Cole-Dixie Highway Company, hereinafter collectively referred to as plaintiffs and separately as ABF, Mercury Motors, Alamo, Braswell, C-66, Central, ET&WNC, Eagle, Gordons, Holloway, Mercury Freight, Red Arrow, Red Line, T.I.M.E.-DC, Transcon, Yellow Freight, Roadway and Cole-Dixie. Roadway and Cole-Dixie were permitted to intervene as plaintiffs after filing.

2/ Hereinafter referred to as ICC or Commission.

Transportation Company, Extension - Atlanta, Georgia[3], 114 M.C.C. 571, granting certificates of public convenience and necessity to three (3) motor carrier applicants[4] under 49 U.S.C.A. Section 307.

PROCEEDINGS BEFORE THE COMMISSION

The proceedings before the Commission were commenced by the filing of an application by Roadway on December 17, 1964. By July 30, 1965, applications had been filed by seventeen (17) other motor carriers and shortly thereafter the number increased to twenty (20), all seeking to conduct general commodity operations between points in the southeast and southwest. Additionally, Bowman sought to serve three points in Missouri, two in Kansas and seven in Arkansas. Pursuant to Commission rules, notice of each application was published in the Federal Register (FR) and protests were filed to the separate applications by multiple carriers. In order to develop an orderly procedure for handling the applications, a prehearing conference was held at the offices of the Commission in Washington on September 9, 1965, following which ten (10) of the twenty (20) applications were consolidated for hearing.[5]

3/ By Order entered December 18, 1969, McLean Trucking Company was substituted as applicant in Docket MC-1124 (Sub-No. 206) in lieu of Herrin Transportation Company, but the original style of the proceeding was maintained by the Commission and will be so referred to herein.

4/ Bowman Transportation, Inc., Docket MC-94201 (Sub-No. 56); Johnson Motor Lines, Inc., Docket MC-106401 (Sub-No. 18); and Red Ball Motor Freight, Inc., Docket MC-22229 (Sub-132).

5/ The applications, so consolidated and the date of filing of each were as follows: Dec. 7, 1964, Roadway, MC-2202 (Sub-No. 273); Mar. 23, 1965, Johnson, MC-106401 (Sub-No. 18); May 17, 1965, Red Ball, MC-22229 (Sub-No. 132); May 18, 1965, Floyd & Beasley Transfer Company, Inc., MC-18088 (Sub-No. 36)(F&B); May 28, 1965, Deaton, Inc., MC-11207 (Sub-No. 203)(Deaton); June 14, 1965, Jones Truck Lines, Inc., MC-111231 (Sub-No. 67) (Jones); June 16, 1965, Strickland Transportation Co., Inc., MC-59680 (Sub-No. 147) (Strickland); June 18, 1965, Herrin Transportation Company, MC-1124 (Sub-No. 206) (Herrin); July 12, 1965, Bowman, MC-94201 (Sub-No. 56); July 30, 1965, Baggett Transportation Company, MC-76177 (Sub-No. 304) (Baggett).

Generally, the territorial scope of the application falls into two categories. Four southwest applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the southeast. Five southeastern applicants, Bowman, Johnson, F&B, Deaton and Baggett,[6] sought to obtain authority to the southwest. Bowman also sought authority to serve Topeka, Kansas and Kansas City, Kansas-Missouri, Carthage and Springfield, Missouri and seven Arkansas points. All twenty of the original applicants represented to the Commission that a public need existed for the proposed services sought. The ten consolidated applications were referred for hearing and recommended order to two Examiners.[7]

Hearings commenced on March 21, 1966 in Washington and continued, with slight respite, for 147 days through August 24, 1967. The hearing sessions were held at eight cities,[8] primarily to accommodate public witnesses located in various sections of the country. 1,009 public witnesses presented oral testimony. There were 1,989 exhibits, many of which were several hundred pages in length and contained studies, depicting traffic flows between the Eastern Seaboard, southeastern and southwestern parts of the country. Evidence in support of 48 protestants was offered by 62 witnesses. The transcript in this proceeding covers 23,423 pages.

At the conclusion of the hearings and prior to the Examiners' Report, volumes of briefs, including abstracts of evidence, were filed. On November 19, 1969, the Examiners served a voluminous Report.[9] They

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6/ Roadway's status and application were somewhat different in that it already operated in both the southeast and southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.

7/ Now termed Administrative Law Judges, but referred to herein as Examiners.

8/ Washington, Atlanta, Dallas, Houston, New Orleans, Kansas City, Tulsa and Memphis.

9/ 32 pages of text and about 275 pages of appendices.

found all of the applicants "fit, willing and able to perform the operations proposed"[10], but recommended denial of all applications. The Examiners reached their conclusion by approaching the applications and the tremendous volume of evidence of public need for additional single-line motor carrier service as if general commodities were not involved. They grouped the supporting witness evidence according to commodities shipped, atomized the evidence of the public witnesses, considered the applications collectively instead of evaluating them independent of the other.

Eight of the applicants filed exceptions to the Examiners' Report.[11] Exceptions were filed by 41 shippers, Lorch-Westway, et al, who were permitted to intervene. Replies to the exceptions were filed and the matter was considered by the Commission, Division 1.

In its decision, the Commission found that the Examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, would be presented by grouping of the supporting evidence on a geographic basis". Herrin, 114 M. C. C. at 591.[12]

After an extensive analysis and comparison of the evidence in support of and in opposition to the application, the Commission concluded

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10/ Examiners' Report, p. 4

11/ Neither Roadway nor F&B filed exceptions. As to Roadway, the denial by the Examiners became the Order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. The exceptions of the other applicants nominally embraced F&B, which had the effect of staying the finality of the Examiners' Report as to it. However, F&B's application was denied. Herrin, 114 M. C. C. 612.

12/ The restatement of the supporting evidence, organized geographically appears in Appendix E, Herrin, 114 M. C. C. at 636-756.

that the applications of Bowman, Red Ball and Johnson should be granted. Herrin, 114 M.C.C. at 599, 612-614.[13/] It found (p. 599):

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."

THE AGENCY DECISION, SUBSEQUENT PETITIONS AND THE FINAL COMMISSION ORDER

The Decision and Report of the Commission, Division 1, served January 24, 1972, was unanimous. Following this unanimous order and prior to May 24, 1972, petitions for reconsideration and petitions under Rule 102 of the Commission's Rules of Practice were filed by multiple protestants and the successful applicants replied. By Order served September 6, 1972, a majority of Division 1, as then constituted, denied the various petitions for reconsideration and under Rule 102 as to the applications of Bowman, Johnson and Red Ball.

The protestants then filed petitions under the Commission's General Practice Rule 101(a)(4) requesting the entire Commission to rule and announce that the proceeding involved an issue of general transportation importance. This procedure is similar to the request for a hearing en banc by the federal circuit courts of appeal. Following consideration of these petitions by the full Commission, they were denied by a vote of 6-3.

13/ None of the unsuccessful applicants is a plaintiff and there is, of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, Fn. 11, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

The issues involved were raised and considered during the administrative process, here for judicial review, in:

1. Original briefs filed by substantially all the parties.

2. Exceptions and supplemental Exceptions to the Examiners' Report and replies thereto.

3. Petitions for reconsideration of the Report and Order of the Commission and replies thereto.

4. Petitions under Rule 102 and replies thereto.

Obviously, the administrative proceeding was thorough and exceedingly well documented. The Report and Order of the Commission contains 225 pages, including a detailed summary of the testimony of the public witnesses.

PROCEEDINGS BEFORE THIS COURT

Following conclusion of the administrative proceeding and on October 4, 1972, this action was filed in this Court by the 16 party plaintiffs. Subsequently, two other carriers were given leave to intervene as plaintiffs. All the plaintiffs, except one (ABF), were protestants to one or more of the applications which were granted. It is significant that most of these applications were filed before any transit time studies of the plaintiffs and that plaintiffs therefore had knowledge of these proceedings prior to their transit studies.

On November 7, 1972, a member of this panel entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity until completion of judicial review.

A briefing schedule for the parties was fixed by the Court which expired on July 16, 1973. On June 29, 1973, the plaintiffs filed a motion for leave to file a supplemental complaint seeking review of orders of the Commission served December 18, 1972 and May 29, 1973, granting, in part, the application of Jones Truck Lines, Inc., Extension - Atlanta,

Ga., 117 M.C.C. 586, and denying petitions for reconsideration thereto. This motion to file supplemental complaint was opposed by the Commission and the intervenors and was denied by this Court on July 24, 1973, on which date, the subject proceeding was submitted for decision and order on the merits.

THE VENUE PLAINTIFFS

The plaintiffs filed this action in this Court on the basis of an alleged interest and residence of ABF and Mercury Motors. Title 28, Section 1398, U.S.C.A., provides that such an action:

> ". . . shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action."

ABF did file a protest to the Bowman application, but as the hearings approached conclusion, ABF withdrew its protest to the Bowman application. On page 19,809 (of a transcript of 23,423 pages), counsel for ABF stated:

> "Mr. Examiner, before proceeding with the testimony on behalf of Arkansas Best Freight System, Inc., I would like to state that at one stage in the proceeding -- I believe it was either the prehearing conference or again at the opening of these hearings -- a protest was entered on behalf of Arkansas Best Freight System, Inc., in the Bowman case as well as in the Roadway case and that in view of the amendments in the Bowman case, we desire to withdraw the protest of Arkansas Best in the Bowman case. We have not done that before.
>
> Arkansas Best remains as a Protestant in the Roadway case only."

At the time of its protest and the hearing, Mercury Motors operated over regular routes between Memphis and Fort Smith by way of Little Rock. It appeared at the hearing in support of its protest to the Bowman application and as a witness in support of Gordons protest to the three applications granted. The Bowman application was amended to exclude Fort Smith and the Bowman grant is restricted against the

transportation of traffic "originating at or received from connecting carriers at Memphis, Tennessee and points in its commercial zone and destined to "points west of the Mississippi River.

THE STATUTE INVOLVED

The controlling statute is Section 207 of the Act (49 U.S.C.A. § 307) which provides, in pertinent part, that:

> "A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity." (Emphasis supplied.)

THE ISSUES INVOLVED

The basic question here involved has been succinctly stated and consistently judicially reaffirmed as follows:[14/]

(1) "Whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a review of the record as a whole."

In Patterson v. United States and I.C.C., 178 F.Supp. 771 (1959), Judge Miller of this panel expressed the basic issue as follows:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence."

(2) Did the Commission commit remandable error in according more weight to the transit time studies of more than 200 public shipper witnesses than it did to the transit time studies of 14 interested motor carrier protestants?

14/ Carolina Freight Carrier Corporation v. U.S., 297 F.Supp. 848, 850.

(3) Did the Commission have authority to and did it properly consider record evidence subsequent to filing the subject applications?

(4) Was the issue of economic mutual exclusivity properly and timely raised; if so, was it pertinent and properly resolved?

(5) Did the Commission commit remandable error in refusing to permit ABF to repudiate its withdrawal of its protest to the Bowman application and to intervene following close of the hearing on the basis of republication involving a point in which it admittedly had no interest and without any effort on the part of ABF to exhaust its administrative remedies?

THE INVOLVED AREA - GENESIS OF THE ORDER

In Cassens Transport Company, Extension - Three States, 67 M.C.C. 410, the Commission stated:

> "We do not conceive our function in proceedings such as this to preserve the status quo at all costs, denying improvements or augmentations in transportation service. The transportation industry should be dynamic, rather than static; and we would be remiss in our duty, if we hampered, rather than promoted, the easy flow of commerce."

To the same effect see Capitol Bus Company, Extension - Washington, D.C., 69 M.C.C. 447.

Over a number of years, the Commission, with prophetic vision, has recognized the expanding development and increasing importance of the South and the increasing transportation importance and needs of the southeast-southwest territory. In 1956, in Walker Hauling Company, Extension, No. MC-103051 (Sub-No. 58), the Commission found that there was extensive industrial development in the South, including Georgia and Florida and that such industrial expansion would continue. In 1957, in Herrin Transportation Company, Extension - Jacksonville, 69 M.C.C. 629, the Commission found:

> "The southwest and southeast territories here involved have enjoyed a tremendous commercial growth, and this is particularly true of Florida, Louisiana, and points in Texas such as Dallas, Houston, San Antonio and Fort Worth."

In 1960, in Roadway Express, Inc., Extension - Birmingham, Dallas, Houston, 82 M.C.C. 689,[15/] it was noted that "a substantial volume of traffic is now moving between Birmingham and points beyond in the southeast on the one hand, and, on the other, points in Texas". Upon review, the Commission there concluded that:

> "The evidence establishes that there is a substantial amount of traffic now available which moves between and beyond the termini of the routes here sought, and a steady growth in this traffic may reasonably be expected."

The Commission has found and recognized that transportation services between the southeast and southwest have "failed to keep pace with the industrial growth of these territories". In 1965, in Braswell Freight Lines, Inc., Extension - Atlanta, 95 M.C.C. 457, in its first order[16/] in that case, the Commission held that the Joint Board was in error in failing to approve the subject application:

> "Especially in the light of the continuing growth, population and industrial output in the southeast and southwest. It was

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15/ In that proceeding, Roadway took a position wholly inconsistent from that here asserted.

16/ Following the first Commission Order, a Three Judge District Court remanded the case to the Commission, on other grounds, for further consideration (Dixie Highway Express, Inc. v. United States (1965), 242 F.Supp. 1016). Upon remand, the Commission extended its former report and reaffirmed its earlier decision (100 M.C.C. 482). On further judicial review, the District Court granted a motion for enforcement of the court's prior judgment and enjoined the Commission, 268 F.Supp. 239. This decision was reversed by the United States Supreme Court in United States, et al v. Dixie Highway Express, Inc., et al, 19 L.Ed. 2d 639. In that case, the Supreme Court rejected the plaintiff's arguments, here repeated (Pl. Br. p. 3), that the Commission should "grant existing carriers an opportunity to remedy deficiencies in service before issuing a new certificate", and that protesting carriers have a "property" or "business interest" in this certificate that insulates them from grants of authority.

the existence of similar factors which moved the Commission in 1960 to grant authority to Dallas-Fort Worth and Houston to protestants Roadway and Mercury.

Even with the grant of the Roadway and Mercury certificates and with the obvious efforts of other protestants to improve their abilities to serve the shipping public, it is clear that existing transportation services have failed to keep pace with the industrial growth of these territories. A large percentage of shipments must still move in 3 or 4-line hauls. Considering the extensive shipper support, the documented population growth, the continued industrial expansion of the southeast and southwest, and the dearth of single-line and relatively efficient joint-line services in these territories, we are convinced that there exists a need for improvement in service which protestants despite their undoubted efforts have been unable to provide." (Emphasis supplied.)

These applications followed the specific findings and conclusions of the Commission, judicially approved, as above noted.

THE SCOPE OF JUDICIAL REVIEW

This is not a novel proceeding in this Court. It is unique only in relation to the volume of testimony and exhibits involved and the detailed and extended consideration applied to the record in the administrative process. The basic legal principles involved remain the same. In the discharge of our responsibility for judicial review, we have the benefit of our prior guide lines, carefully formulated, firmly accomplished and judicially approved by other reviewing courts. In Patterson v. United States and I. C. C., 178 F. Supp. 771 (1959), as here, an action was brought to set aside an order of the ICC. In writing for the Court, Judge Miller (of this panel) stated:

"The scope of the review by the Court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence.

The weight to be given by the Court to an administrative finding is well established. In

Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S. Ct. 108, 111, 56 L. Ed. 308, the Supreme Court observed that it would 'not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling.' In Georgia Public Service Commission v. United States, 283 U.S. 765, 51 S. Ct. 619, 623, 75 L. Ed. 1397, the Court said:

> 'It is not our province to enquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the consistency of its conclusion with those reached in similar cases.'

In a recent case arising in this Circuit, involving a final order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D. C. D. Minn. 1959, 169 F. Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S. Ct. 140:

> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S. Ct. 589, 87 L. Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D. C., 158 F. Supp. 248; Minneapolis & St. Louis Railway Co. v. United States, D. C., 165 F. Supp. 893.'

The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D. C. W. D. Mo. 1955, 134 F. Supp. 502."

The Patterson case was cited with approval in Zuzich Truck Line, Inc. v. United States and ICC, 224 F. Supp. 457, at 468 (1963), as support for the statement that:

> "The court must sustain the Commission if its findings on the issue of present or future public convenience and necessity are supported by substantial evidence."

In Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (1966), a three-judge court of this division (containing two members of this panel, Circuit Judge Mehaffy and District Judge Miller) noted the limited scope of judicial review, stating that the Court:

> ". . . is not at liberty to substitute its opinion of the evidence or conclusions or judgment for that of the Commission. Such determinations are solely within the province of the Interstate Commerce Commission and the Congress has expressly delegated these matters to the expertise of the Commission."

Substantial evidence is not the equivalent of a preponderance of the evidence but is such "relevant evidence as a reasonable mind might accept as adequate". The mere fact that the Court would have reached a different conclusion is immaterial. Consolo v. Federal Maritime Comm'n, 383 U.S. 607; Garrett Freight Lines v. United States, 305 F. Supp. 149. Mr. Justice Holmes' definition of substantial evidence is still a polestar of judicial review. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229, 59 S.Ct. 206, 83 L. Ed. 126:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."

If there is a rational basis for the conclusions reached by the Commission, the judicial function is exhausted. Mississippi Valley Barge Lines v. United States, 292 U.S. 282, 54 S. Ct. 692, 78 L. Ed. 1260 (1934); Interstate Commerce Commission v. Inland Waterways Corporation, 319 U.S. 671, 63 S. Ct. 1296, 87 L. Ed. 1655 (1943).

In defining substantial evidence affirmatively, in Superior Trucking Company v. United States, 306 F. Supp. 872, 875 (N.D. Ga. 1969), the Court said:

> "In considering plaintiffs' objections, we must be guided by the standard of judicial review set out in the Administrative Procedure Act, 5 U.S.C. §1009(e), requiring 'substantial evidence' on the record as a whole. Substantial evidence is something less than the weight of the evidence, Short Lines, Inc. v. United States, 290 F.Supp. 939, 941 (D.R.I.1968). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 86 S.Ct. 1018, 16 L.Ed.2d 131 (1966). Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept to support a conclusion'. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence . . . must do more than create a suspicion of the existence of the fact to be established. . . . [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' N.L.R.B. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S.Ct. 501, 505, 83 L.Ed. 660 (1939)."

The plaintiffs argue that the action of the Commission "was arbitrary, capricious, an abuse of discretion, and not in accordance with law", and that these allegations are within the ambit of the Administrative Procedure Act (APA), noting that in Columbia Shippers and Receivers Ass'n, Inc. v. United States, 301 F.Supp. 310, 319 (Del.1969), the Court said that it must apply:

> ". . . in addition to the 'substantial evidence' test generally applicable to this action, the standard of review set forth at 5 U.S.C. §706(2)(A):
>
> '. . . the reviewing court shall
>
> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"

Generally, if there is substantial evidence to support agency

action, it cannot be said to be arbitrary, but we desire to fully consider and will seek to determine every issue here raised. The plaintiffs allege that the orders of the Commission were arbitrary in that plaintiffs contend:

(1) The Commission gave consideration to "service restrictions" of the plaintiff carriers but did not give adequate consideration to alleged similar service restrictions of the applicants.

(2) The Commission took official notice of an industry publication (American Motor Carrier Directory) that one of the protestant carriers had closed one of its Mississippi terminals and alleged that it did not note, in the same publication, that Red Ball had reduced its number of terminals.

(3) The Commission gave greater weight to transit time studies of applicants and shipper witnesses than to those of plaintiffs, specifically, that the Commission gave "full credit" to shipper-sponsored transit time studies and less weight to plaintiffs' studies.

(4) The Commission did not give proper consideration to the ability of plaintiffs to perform their transit time studies.

As did the Commission, we have considered each of these issues.

First, the distinction should be noted between alleged "service restrictions" and "tariff restrictions". A service restriction is one where the carrier declines or refuses to provide service or imposes an embargo on the movement of certain traffic. A tariff restriction is one where the carrier provides the rate or charge for the movement of specified commodities between designated areas or points. For example, a carrier may publish what is commonly termed as a "two or three line haul restriction". This means that the carrier will participate, through interline, in the movement of this traffic between designated points or areas on the basis of through rates (generally lower) only if the movement by participating carriers does not exceed two or three, as the case may be. This is entirely different from a refusal of a carrier to transport

authorized shipments which it is obligated, under the Act and its certificates to handle. In the subject proceeding, the Commission specifically found that (114 M. C. C. 596):

> "About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the out right refusals of authorized carriers to handle traffic."

After detailing multiple objections, the Commission further noted (114 M. C. C. 597):

> "Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers."

Tariff publications relating to two or three line hauls deal with the rate at which the traffic will move. Refusals of service constitute a blockade or embargo under which the carrier refused to handle the traffic or participate in the movement at any published rate. The fact is the Commission correctly found that approval of the subject applications would materially reduce the impact of any tariff restrictions because even in those instances where a two or three line haul restriction was in effect it would reduce the number of carriers required to handle the movement from origin to destination and in almost every instance involved in this proceeding, provide for the movement from origin to destination with two and not to exceed three carriers. The Commission did not find any service refusals on the part of the successful applicants.

Additionally, the Commission found that (114 M. C. C. 596):

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic.

> Approxima tely 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive."

and that (114 M. C. C. 597):

> "Approximately 110 shippers complaint about inte rline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer time s a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing."

Further (114 M. C. C. 597):

> "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service."

and that (114 M. C. C. 597):

> "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States."

All of these findings are supported by and documented in Appendix E to the Commission Report. 17/

In such cases of carrier deficiencies and refusals, the Commission has the duty to procure additional transportation services to carry out the

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17/ For example, the following witnesses complained of protestants' service restrictions, embargoes and outright refusals to deliver shipments (references are to witness numbers and transcript pages): 4(6) - 1724-1756; 15(26) - 2210-2298; 36(77) - 3561-3573; 40(89) - 3800-3822; 52(124) - 4499-4502(f); 54(127) - 4530-4555; 56(134) - 4710-4738; 2(861) - 17929-17947; 22(426) - 10848-10870; 3(214) - 6741-6773; 1(855) - 18430-18451; 3(866) - 18031-18055; 1(30) - 2417-2435; 2(31) - 2436-2453; 3(35) - 2489-2511; 8(125) - 4502G-4502-X; 20(668) - 15064-15094; 1(13) - 1920-1973; 3(27) - 2298-2335; 4(28) - 2339-2440; 5(53) - 3278-3302; 7(78) - 3573-3602; 13(210) - 6622-6637; 17(460) - 11458-11490; 35(252) - 7576-7600; 1(325) - 9197-9235.

purposes of the Act and the National Transportation Policy.

In Nebraska Short Line Carriers, Inc., Common Carrier Application, 79 M.C.C. 599, 615,[18] the Commission stated that:

> "Where, as here, the existing carriers are shown to have so conducted their operations as to result in serious inadequacies in the service available to a large section of the public, one effective method of correcting the situation is by granting of authority for sufficient additional service, and, in fact, we are charged with the duty of procuring such additional facilities as may be necessary to carry out the purposes of the national transportation policy."

In Galveston Truck Line Corporation v. Ada Motor Lines, Inc., 73 M.C.C. 617, 626, the Commission noted the duty of motor carriers to perform authorized service and warned that they would be held "strictly accountable for its performance" in stating:

> "We think it beyond doubt that the Interstate Commerce Act imposes upon common carriers by motor vehicle subject to our jurisdiction the clear and unmistakable duty to provide adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce within the scope of their holding out to the public, and that they are obligated to accept and transport all freight offered to them in accordance with the provisions of their published tariffs. This duty is almost an absolute one; and, if the public is to be adequately protected, common carriers must be held strictly accountable for its performance."

In Planters Nut & Chocolate Company v. American Transfer Company, 31 M.C.C. 719, 729, the Commission declared:

> "Common carriers by motor vehicle are obligated to accept and transport all freight offered to them in accordance with the provisions of their tariffs. The refusal of the group-two carriers to accept and transport complainants' freight tendered to them by Rutherford and the group-one carriers was and is unlawful. If the

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18/ Affirmed, 148 F. Supp. 31, but reversed on other principles in 371 U.S. 156.

> group-two carriers desire to continue to serve the public as common carriers, they should serve all of the public, including complainants."

And in Montgomery Ward & Company, Inc. v. Consolidated Freightways, 42 M.C.C. 225, 231, the Commission noted:

> "Every common carrier is under a duty to receive and transport any property tendered to it for transportation, provided the property is such as it holds itself out as willing to carry, or as it usually carries."

In Pensick & Gordon, Inc. v. California Motor Express, 302 F. 2d 391, a shipper filed suit against motor carriers for damages for the alleged breach by the carriers of their duty to render reasonable service without discrimination. The District Court dismissed the complaints for lack of jurisdiction and the shipper appealed to the United States Court of Appeals, 9th Circuit, which held that the only recourse of the shipper was with the Interstate Commerce Commission, and that whether carriers have failed to provide a reasonable and nondiscriminatory service is a question that can be answered only by the Commission, stating that:

> "Whether a carrier has without jurisdiction failed to provide reasonable and nondiscriminatory service is a question of defining the carrier's duty in the framework of the National Transportation Policy and only the Commission can answer that question."

At 114 M.C.C. 605, Fn. 42, the Commission noted that:

> "42. The fall 1971 edition of the American Motor Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points: Jackson."

We are not persuaded that this fact was of crucial importance in this proceeding. The plaintiffs argue that the Commission should have noted, in the same publication, the closing of some of the Red Ball terminals or agency stations. Significantly, the plaintiffs have never denied the fact found that "Dixie serves only 4 of the 10 Mississippi points sought to be served by Bowman and maintains terminals at only 2. . .". In their

petition for reconsideration filed in May 1972, the plaintiffs availed themselves of the opportunity afforded by the Commission's General Rules of Practice to rebut any reference which conceivably could be drawn from this one fact. They have not claimed the fact was unlawfully noticed or that it unduly influenced the Commission's decision to their material prejudice. Cf. American Trucking Associations, Inc. v. Frisco Transportation, 358 U.S. 133, 79 S. Ct. 170, 3 L. Ed. 2d 172 (1958). They argue that the Commission should have coupled its Fn 42 notice with notice of the alleged closing of agency stations by Red Ball. The number of Red Ball terminals was only one of the multiple factors considered by the Commission in selecting Red Ball as the southwest applicant to fulfill the public need for service. The Commission considered this specific issue in the petitions for reconsideration. In its reply to petitions for reconsideration, Red Ball showed that it still operated more terminals in the southwest than any of the protestants. Specifically, it showed the number of terminals maintained by Red Ball and other motor carriers in the States of Colorado, New Mexico, Oklahoma, Texas, Arkansas, Louisiana and Mississippi. Red Ball had more terminals than any other carrier.

The plaintiffs' argument is a two edged sword. If the reduction in number of terminals since conclusion of the hearings is to be used as an argument against the Red Ball grant, then the fact that subsequent to the hearings Johnson opened 76 additional terminal facilities and Bowman opened 26 additional terminal facilities would emphasize the grant to these carriers, but all of this information was communicated to the Commission in petitions for reconsideration and replies thereto. The plaintiffs have not shown that this rather insignificant officially noticed fact unduly prejudiced them in any manner whatsoever.

Perhaps the principal thrust of plaintiffs' brief was the contention that the Commission gave greater weight to transit time studies of

applicants and shipper witnesses than to those of the plaintiffs.

Admittedly, the Commission thoroughly considered all transit time studies presented and we may add it did so with exceptional diligence and detail. The obvious work devoted to and time consumed in preparation of the 225 page report is exceptional. We recall few instances where any administrative or judicial proceeding has been so marked with detailed basic findings and facts.

In summarizing the 14 protestants' transit time studies, the Commission stated (114 M. C. C. 599):

> "The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during a specified period. The 1-year study of all the relevant traffic handled by one carrier demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration."

The plaintiffs "interpret" and "assume" that "little, if any, weight was given to those general service exhibits of the protestants" (Pl. Br. p. 127) and argue that more substantial weight was given to the transit time exhibits of the applicants and supporting shippers. As noted, the weight accorded to the various transit time studies, and the reasons therefor, was

clearly stated by the Commission. Additionally, all of the documents are summarized in the Order, particularly Appendix E.

The Facts show that the 14 transit time studies presented by motor carrier protestants were for comparatively limited and selective periods of time: 6 were for only 1 week; 3 were for 2 weeks; 1 was for 1 month; 1 for 2 months; 1 was selected for periods of 2 days; 2 for 3 months; 1 for a number of 1 week periods; 1 for a week and a month; 1 was for 1 year.

Only two protestants had transit time studies of over two months, one was Consolidated which had a one year study, noted by the Commission (p. 599, Order), and one non-plaintiff protestant (GFA) had a study of 3 months.

After noting and considering all the arguments here repeated, the Commission stated (Order, p. 600):

> "Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic, pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings."

650, or approximately 80% of the 824[19/] shipper witnesses who testified in this proceeding had specific complaints of inadequate and inconsistent transit time and expressed a dire need for reliable and consistent service between the Bowman authorized and proposed points.

The supporting shippers and receivers testified that as a result of inconsistent and excessive transit times experienced on a recurring basis,

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19/ This represents the 933 witnesses who testified less the 109 which supported the application of Roadway.

their business has been materially hampered by an inability to

-- reduce inventories where their storage space and investment capital were limited.

-- maintain production schedules where they are dependent upon consistent service.

-- give timely delivery or serve customers on special orders, for example, on special and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timely deliveries are not effected.

-- take short term discounts.

-- obtain job site delivery to metropolitan areas where construction crews and production lines frequently are awaiting arrival of goods and supplies.

-- carry in stock the multiple sizes, colors and grades of such items as carpets, textiles, tile and paint, thereby making it necessary to order from brochures or samples and to depend upon expeditious, consistent motor carrier service.

-- order from preferred markets.

Additionally:

-- the fact that quicker and more dependable service is available between the west coast and Texas points, militates against the southern market.

-- installations cannot be made in the time and manner required.

-- companies have been unable to advise customers as to the delivery of special orders of merchandise not in stock.

-- many companies have been required to pay higher or premium prices in order to insure a reasonable delivery time from now preferred markets.

The plaintiffs urge this Court to judicially hold that in the study and application of such transit time exhibits, the Commission, as a matter of law, must give greater weight to the records of protestant motor carriers, a position which the Commission previously has rejected in Strickland Transportation Company, 77 M. C. C. 655, 663, stating:

"We cannot accept the general proposition that a carrier's records are accurate and

that a shipper's records are not, or that the carrier's records are more likely to be accurate than the shipper's."

It is well settled that reviewing courts should not weigh the evidence. As was recognized in Arrowhead Freight Lines v. United States, 115 F. Supp. 537, 544 (S.D. Cal. 1953):

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made in other cases, is beyond our province." (Citations of five Supreme Court cases omitted). (Emphasis supplied.)

We are persuaded that the Commission gave careful consideration to those transit time studies introduced to support the applications and those presented in opposition, then measured them in comparison to each other. In regard to the transit time studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 598:

> "The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7 day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1-and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving."

In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications.

In sum, the transit times studies of the 14 protestants generally relate to short periods of time and were made when protestants were confronted with the possibility of additional competition.[20/] Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. In Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482 (1966),[21/] in circumstances much the same as here, the Commission said at 499-494:

> "As noted, periods of time covered by the protestants' service exhibits generally occurred subsequent to the notice or commencement of the hearing herein. Thus, most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise. We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive

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20/ One protestant, Consolidated, introduced a transit time study covering a one year period showing that in the carriage of 54,681 shipments (more than 45% of the shipments reflected in all of the protestants' time studies), it achieved an on time performance of only 33.5%. The Commission was clearly justified in finding contrast between the long term study of all the relevant traffic and "certain instances" of "expeditious service" in the short term studies. It certainly was not irrational for the Commission do do so, as plaintiffs mistakenly charge. (Pl. Br., pp. 157-160).

21/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also rejected by that court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

> service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected areas."

This standard conforms to an even earlier judicial stamp of approval to the Commission's exercise of discretion in a similar situation. In T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, Circuit Judge Brown explained, 186 F. Supp. at 791-792:

> "The [transit time] evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." (Emphasis supplied.)

The Commission found that approximately 650 shippers complained about inconsistent and excessive transit times, and that over 200 of these witnesses introduced transit time studies demonstrating the undependable service they presently received. 114 M.C.C. 596.

To state this finding another way, (1) 650 public witnesses orally complained about excessive transit times and (2) 200 supporting witnesses corroborated those complaints with abstracts of shipping documents. These abstracts or "transit time studies" showed the actual number of days

elapsing between the receipt of the shipment by the "originating carrier" and its delivery at destination by the "delivering carrier"[22/].

The 650 oral complaints respecting excessive transit time were received in evidence and weighed by the Commission in reaching its findings. Oral transit time complaints by the public bottomed the certificate award approved in West Brothers, Inc. v. United States, 303 F. Supp. 1171 (S.D. Miss. 1969). Moreover, this rule of evidence in I.C.C. operating rights cases has been observed for many years. As the Commission put it in 1957 in Bostwick Common Carrier Application, 72 M.C.C. 317, 324:

> ". . . we [do not] agree with protestants that the admission of [oral] evidence relating to specific delays experienced by shippers without underlying documents in support thereof was improper. True, underlying documents would serve to corroborate such evidence, but, historically, evidence relating to the type and character of service received by shippers and receivers, gleaned from their own personal knowledge and gained during the conduct of their businesses, has been accepted."

In this huge proceeding over 200 of the 650 public witnesses corroborated their oral complaints as to unsatisfactory transit times with abstracts of underlying shipping documents prepared and maintained in the normal and ordinary course of their business. Oral testimony thus corroborated is entitled to and has historically been accorded "more than merely nominal weight by" the Commission. T.I.M.E. Freight, Inc., Extension - Alternate Routes, 89 M.C.C. 241, 244 (1962).

In an effort to refute the public's oral and documented complaints as to excessive transit times, 14 of the 46 protestants in the consolidated proceeding submitted transit time studies. After considering this evidence

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22/ When a shipment is transported in "single line service" it is originated and delivered by the same carrier; when it is transported in "joint line service" it originates on the line of one carrier and is delivered on the line of another.

at length, the Commission found ". . . that protestants' studies do not present as valid a picture as those introduced by [the public witnesses]." 114 M.C.C. at 599; App. G at 764, 767, 770, 772, 774, 776, 777, 779, 780, 782, 785, 786, 787, 792. In sum, the Commission simply gave greater evidentiary weight to 200 studies sponsored by impartial public witnesses than it accorded 14 studies submitted by carriers having a vital interest in defeating the applications.

We have not been convinced that the Commission was wrong.

In a similar situation in T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777, aff'd 366 U.S. 419, Chief Judge John R. Brown of the Fifth Circuit responded to the plaintiff's argument that the agency accorded too much weight to transit time complaints of shippers and too little to the transit time studies of protestants, stating:

> "The evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." 186 F. Supp. at 791-792.

Judge Brown's opinion in T.S.C. is not the only guideline supporting the Commission's determination here. Bringing to bear its expertise developed over many years in deciding applications for new or extended operating authority, the I.C.C. resolved essentially the same evidentiary

problem in precisely the same way in 1966 in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, saying:

> "We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected area." 100 M.C.C. at 493-494.

Tacitly admitting established transit time deficiencies, the plaintiffs argue that they should have been given an opportunity to remedy the defects in their transit time, but this argument recently has been considered and rejected by the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L.Ed. 639 (1967)

In the Dixie Highway litigation the Commission awarded a certificate to Braswell notwithstanding that during the course of its consideration of Braswell's application, protestants Mercury and Roadway were newly certificated to operate over some of the routes involved in Braswell's proposal. There, as here, Mercury and Roadway, among others, claimed that these changed circumstances required a denial of the Braswell application because the newly certificated carriers had not been found to be rendering inadequate service. A three-judge district court agreed, and annulled the Braswell award. Dixie Highway Express, Inc. v. United States, 268 F.Supp. 239 (S.D. Miss. 1967). The Supreme Court reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L.Ed. 2d 639 (1967) saying:

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and

> necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is, of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v. Drum, 368 U.S. 370, 374, 7 L. Ed. 2d 360, 363, 82 S. Ct. 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v. Parker, 326 U.S. 60, 70, 89 L. Ed. 2051, 2062, 65 S. Ct. 1490 (1945); see Schaffer Transportation Co. v. United States, 355 U.S. 83, 90-91, 2 L. Ed. 2d 117, 122, 123, 78 S. Ct. 173 (1957)." 389 U.S. at 411-412.

The Supreme Court then remanded the case to the District Court for further action consistent with its ruling. Reversing its prior annulment in light of the Supreme Court's holding, the three-judge District Court said:

> "But [our prior criticism of the treatment of the Mercury and Roadway certificates] did not peoperly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. (Footnote omitted) A sound discretion in the exercise of highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision."

Contrary to plaintiffs' argument, the Commission did give consideration to the ability of applicants to perform their transit time proposals, even though no exceptions were taken to the Examiners' finding that the applicants were capable of the service they proposed.[23/] The

23/ Examiners' Report, p. 4

Commission said (114 M. C. C. at 611):

> "Some of the protestants challenge the feasibility of the proposal of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in West Brothers, Inc., Extension - Baton Rouge, La., 106 M. C. C. 792, 799 (1968), modified on other grounds at 108 M. C. C. 485 (1969):
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> > 'Evidence that applicant's transit time for existing services over a shorter distance is more than . . . [the proposed transit time] is not conclusive proof that it will not render . . . [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.'"

The plaintiffs further argue that the Commission failed to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers. At page 576 of its order, the Commission stated:

> "As indicated in appendix D, certain protestants request that official notice be taken to specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. West Brothers, Inc., Extension - Baton Rouge, La., 108 M. C. C. 485, 489 (1969); and Ayers Extension - Cheyenne, Wyo., 99 M. C. C. 795, 797 (1965). Accordingly, the actions affecting carriers not parties". (footnote: "Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Saia Motor Freight Line, Inc., and Terminal Transport Co., Inc.") "to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations."

Specifically, we find that the Examiners or the Commission, or both, referred to the following orders relating to subsequent changes:

(1) McLean-Control-Herrin, MC-F-10121, Merger, decided 8-5-69 and substitution of McLean for Herrin as applicant. (ERO, p. 2 and appendix A, p. 1) (O, p. 571, 600, 615, and 627).

(2) "Since the close of the hearing Herrin, Braswell and Mercury Freight also obtained authority to operate between Atlanta and Dallas and Atlanta and Houston". (ERO p. 16, footnote 13.)

(3) Roadway Exp-Control-West, MC-F-10178, decided June 26, 1969. (ERO p. 22, and appendix A, p. 6) (O, p. 782)

(4) MC-111383, Sub 16, Braswell Motor Freight (ERO, p. 27, and appendix D, p. 56) (O, p. 792)

(5) MC-75320, Sub 106, Campbell Sixty-Six Exp. (February, 1969) (ERO, p. 27, and appendix D, p. 35) (O, p. 777)

(6) MC-F-10585, Campbell Sixty-Six-Merger-United (November, 1969) (O, p. 611 and 777)

(7) MC-F-10219 and MC-75320, Sub 144, Campbell Sixty-Six (O, p. 777) (April 1969)

(8) MC-75320, Sub 150, Campbell Sixty-Six (April 1970) Ext., Atlanta (O, p. 777).

(9) MC-F-9730, Herr. -Purchase (Portion)-Tamiami, (ERO, appendix A, p. 4)

(10) MC-F-9921, Bowman-Purchase (Portion) Alabama Highway Express (August 1968) (ERO appendix A, p. 25) (O, p. 585)

(11) MC-94201, Sub 86, Bowman Trans., Inc. (July 1971) (O, p. 575 and 772)

(12) 104 M. C. C. 737 - Yellow Freight-Merger-Watson-Wilson (December 1968) (ERO appendix D, p. 12) (O, p. 764)

(13) MC-F-9918, Mercury Freight Lines, Inc. -Purchase (Portion)-Sam N. Cole (April 1969) (ERO, appendix D, p. 27) (O, p. 771)

(14) West Brothers-Extension-Natchez and Baton Rouge (ERO appendix D, p. 29) (O, p. 772)

(15) MC-F-9871, Admiral-Merchants-Control-Jack Cole-Dixie Highway Co. (November 1967) (ERO appendix D, p. 36) (O, p. 777)

(16) MC-F-10107, Jack Cole-Merger-Dixie Highway (October 1968) (O, p. 634)

(17) 109 M. C. C. 76, Consolidated Freight-Control (1969) and MC-42487, Sub 744 (January 1971) (O, p. 759)

(18) MC-F-9822 and MC-35320 (Sub 109), T. I. M. E. -DC (May 1970) (O, p. 762)

(19) 110 M. C. C. 892 (1969), Georgia-Florida-Alabama Transp. Co. Extension (O, p. 774)

(20) MC-41432 (Sub 103), East Texas Motor Freight, Inc. Ext. -Mississippi and Louisiana Points (1971) (O, p. 779)

(21) MC-F-10260 and MC-31389 (Sub 120), McLean Trucking Co. - Purchase - S. Z. Harrison (August 1970) (O, p. 784)

(22) MC-31389 (Sub 121), McLean as substituted applicant for Herrin (March 1970)(O, p. 784)

(23) 112 M. C. C. 558 (1970) Braswell Motor Freight Lines, Inc., Ext., MC-111383 (Sub-No. 17) (July 1971) (O, p. 792)

We have also noted disposition of the ten applications preheard with the ten applications considered in this proceeding, and have noted that a substantial majority of those applications were approved by the Commission. 24/

THE PETITION OF ABF FOR LEAVE TO INTERVENE AND FOR RECONSIDERATION

A brief background of pertinent facts is helpful to place the petition of ABF to intervene in proper perspective. The Bowman application was filed on June 12, 1965. Notice of the application was published in the FR of August 19, 1965. The application was restricted:

> To the transportation of traffic moving from, to or through Birmingham and Mobile, Alabama, Pensacola, Florida, and Memphis, Tennessee.

24/ Braswell Sub-No. 17 granted: C-66 No. 103 granted with conditions; Mercury Freight Subs-No. 11 and 12 granted; Transcon Sub-No. 54 granted; Deaton Sub-No. 232 denied; Gordons Sub-No. 94 and Dixie Ohio Sub-No. 62 - dismissed by applicants.

Route (5) sought authority:

> Between Montgomery, Alabama and junction U.S. Highways 11, 80 and Interstate Highway 59, over U.S. Highway 80, serving all intermediate points.

and Route (6)(a) sought authority:

> Over U.S. Highway 11 (also over Interstate Highway 20) from Birmingham to Meridian, Miss.

These two routes, (5) and (6)(a), connected at the junction described in Route (5).

At the inception of the consolidated proceedings, ABF protested the applications of Roadway and Bowman. However, prior to the presentation of protestants' evidence in opposition, ABF, as previously noted, withdrew its protest to the Bowman application which was amended to eliminate proposed service to Fort Smith, Arkansas and Oklahoma points.

Throughout the proceeding, Bowman's intention was clearly stated to use the Montgomery gateway and the junction point named in Route (5) for the purpose of joinder only. The Commission Order states that (611-612):

> ". . .although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language."

Pursuant to that Order, notice was republished in the FR of Thursday, February 22, 1972, following which ABF filed a petition to intervene and for rehearing. It is the only plaintiff which did so.

The complaint of ABF involved the acquisition by Bowman of a part of the operating authority of Alabama Highway Express, Inc. (AHE) during pendency of the subject proceedings and the acquisition by ABF of a part of the operating authority of Youngblood Truck Lines in Docket MC-F-11179.

CHRONOLOGY OF PERTINENT DATES

A chronology of pertinent dates is helpful to understanding the issues here involved.

June 12, 1965	-	Bowman application was filed.
August 19, 1965	-	Notice of Bowman application in the Federal Register
September 3, 1965	-	ABF filed protest to the Bowman application
March 29, 1966	-	Bowman amendment, X-46, received (972)
June 15, 1967	-	ABF withdrew its protest to the Bowman application
November 1, 1967	-	Notice of application, Bowman-Purchase(Part) - AHE in FR
August 15, 1968	-	Bowman - Purchase (Part) - AHE consummated with Commission approval
May 19, 1971	-	Application filed, ABF - Control and Merger - Youngblood, MC-F-11179
October 15, 1971	-	ABF-Control and Merger-Youngblood approved by Commission

The Commission noted that Bowman's intent to "use Montgomery as a gateway" was clearly specified throughout the proceedings. Bowman presently holds authority to serve that point. The republication did not add any new points or routes. It simply specified that Montgomery could be used as a gateway and that the junction described in paragraph (5) of the original application could be used for the purpose of joinder only.

During the subject proceeding, Bowman acquired a part of the operating authority of AHE. Notice of this application was published in the FR on November 1, 1967, and, after hearing, with approval of the Commission, was consummated in August 1968. ABF did not protest this application. Approval of this acquisition gave Bowman operating authority between Birmingham, Alabama and points within a radius of 65 miles thereof, on the one hand, and, on the other, points in Indiana, Tennessee, the northwest two-thirds of Ohio and the central one-third of Illinois.

Thereafter, on May 19, 1971, ABF filed an application to merge its authority with that of Youngblood Truck Lines. This application was approved by the Commission on October 15, 1971 in Docket MC-F-11179. The acquisition of Youngblood by ABF extended its operations into North Carolina, South Carolina and Georgia. By reason of the Youngblood acquisition, ABF can transport freight between the named Atlantic Seaboard states, on the one hand, and, on the other, its central freight territory. Additionally, Youngblood can transport freight between its western territory and its central freight territory. In brief, ABF argued that the authority which Bowman acquired from AHE should be restricted in this proceeding. The petition of ABF was referenced as number (6) in the Order of the Commission on rehearing dated September 1, 1972, and was denied by the Commission for the following stated reasons:

> "It is further orderdd, that the petitions in (1), (2), (3), (4), (5), (6), and (7) above collectively seeking leave to intervene, and requesting further hearing and reconsideration be, and they are hereby, denied and rejected, respectively, for the reasons (1) that the publication of the grant of authority in No. MC-94201 (Sub-No. 56) was made for the purpose of apprising the interested persons of the additional authorization to use Montgomery, Ala. as a gateway and to serve a specified point in Alabama for purposes of joinder only, which was not included in the notice of authority sought as originally published in the Federal

Register issue of August 19, 1965; (2) that the petitioners' stated interests in No. MC-94201 (Sub-No. 56) are generally based either (a) on authority in conflict with the services proposed as set forth in the publication as originally made, and petitioners had ample notice and opportunity but failed to file timely protests at the time in the proceeding in which they now assert an interest or, as in the case of petitioner in (6) above, filed a timely protest and later withdrew said protest, (b) on authority acquired by them after the original publication, which authority does not conflict with the additional authorization necessitating republication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, it has not been shown to be prejudiced by the involved portion of the grant requiring republication, or (c) on authority acquired by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) to the extent is authorized service at Montgomery, Ala., and a specified point in Alabama for purpose of joinder only; and (4) that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to the authority acquired by certain of the petitioners subsequent to the original publication, there is no showing that such evidence would warrant a result different than that reached in the report and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purpose of joinder only."

The defendants assert that the Commission was right and the petition of ABF was not well taken. In support, they point to the following facts:

(1) ABF withdrew its protest to the Bowman application. Admittedly, ABF was an original protestant to the Bowman application. It withdrew its protest following completion of shipper testimony with knowledge of the intended use of the Montgomery gateway and joinder of Routes (5) and (6)(a) at the noted junction.

(2) ABF did not protest the Bowman acquisition of AHE. Admittedly, ABF had notice of the Bowman application to purchase AHE and did not file a protest.

Rule 247(d)(2) of the Commission's General Rules of Practice specifically provides that:

> "Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding . . ."

The argument of ABF that the Commission should consider the Bowman application in the light of facts other than those related to Montgomery necessarily is based on a premise that ABF could not have known until the republication that Bowman would be able to tack[25/] the rights granted in this proceeding to the operating authority which Bowman obtained by purchase from AHE in August 1968.[26/]

The language of the Bowman application is not now nor was it at the time of FR publication ever construed by the Commission to be a restriction against tacking with after-acquired authorities. If a restriction had been intended, the notice would have so stated because, with respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co., Extension - Oklahoma, 106 M.C.C. 1, 18 (1967). In Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969), the Commission explained the reason for the policy, 110 M.C.C. at 390-391:

> "The reason for the foregoing is relatively simple. The right of a common carrier to join separate unrestricted grants of authority at a point of service common to both authorities in order to provide a

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25/ "Tacking" means a carrier's ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

26/ Notice of the filing of this application in Docket MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority granted, in the Federal Register on June 19, 1968.

through service does not ordinarily accrue to the carrier on the basis of a finding that the public convenience and necessity require the through service. Rather, it comes into existence as a logical sequence to the fact that if two separate authorities with a common point of service were held by different carriers, such carriers could participate in an interline movement for the provision of a through service. In other words, the right to tack is primarily an extension of interchange concepts and is subject to many of the privileges and obligations which attach to interchange."

Furthermore, the Examiners' Report served November 19, 1969, showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority it sought herein. 27/ In fact, the Examiners' Recommended Report specifically stated on page 25 that:

"NOTE: In August 1968 Bowman acquired a portion of the operating rights of Alabama Highway Express which included among other authority the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. . . . decided July 8, 1968."

Despite having actual notice of Bowman's intent from the date of receipt of the Examiners' Report, ABF did nothing and made no attempt to seek leave to intervene until more than two years had passed. ABF did not protest the purchase application although it was timely and appropriate for ABF to do so if it claimed any adverse effect.

Closely in point is Howard Hall Company, Inc. v. United States, 332 F. Supp. 1079, 1082 (N.D. Ala. 1971), where the court explained:

27/ Examiners' Report, Appendix A, p. 25

> "The case of Warren Transport, Inc., Extension - Dubuque to North Dakota, 98 M. C. C. 761, points out two basic principles concerning the tacking of common carrier authority; First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension Liquid Chemicals, 73 M. C. C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M. C. C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M. C. C. 389 (1969). "

The FR notice of the subject application and the Bowman purchase of AHE constituted official notice to ABF of Bowman's intention to tack. ABF's 1972 petition for intervention is untenable, and as the United States Supreme Court stated in United States v. Northern Pacific Railway, 288 U.S 490, 53 S. Ct. 406, 77 L. Ed. 914:

> "They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted. "

(3) To insert a restriction affecting the rights Bowman acquired from AHE would constitute an unlawful revocation of rights.

Admittedly, there was no restriction proposed in the AHE purchase proceeding and none was imposed. The defendants take the position that to impose such a restriction, at this time, in a separate proceeding, would constitute a revocation of operating rights which could be considered only under Section 212 of the Act "for willful failure" of Bowman to comply

with the Act or lawful regulations promulgated thereunder and following notice, hearing and failure to comply with an order of the Commission directing compliance.

(4) ABF is not authorized to serve any cities in Alabama.

As noted, the republication simply added Montgomery to the restriction in the Bowman application. Admittedly, ABF neither holds nor claims to hold any authority to serve Montgomery or any Alabama points. It could not be prejudiced by the amendment to the restriction in the Bowman application adding Montgomery since it can handle no freight to or from Montgomery and cannot serve the involved junction point.

(5) ABF has failed to exhaust its administrative remedies

The ABF petition for intervention was filed after it had participated throughout the proceeding and after it had withdrawn its protest to the Bowman application. ABF did not file a petition for reconsideration of the order of the Commission dated September 1, 1972 denying its petition for intervention and reconsideration, and it took no further administrative action with respect to that order. In the October 4, 1972 complaint to this Court, plaintiffs alleged, for the first time, that in declining to permit ABF to re-enter and reopen the proceeding, the Commission denied "due process". ABF's failure to seek Commission reconsideration of the Commission order of September 1, 1972 precludes it from raising the issue for the first time before this Court. See the Opinion of Judge Miller of this panel in United States v. Carroll, 203 F. Supp. 423 at 428. Commission Rule 101 provides that:

> "All decisions . . . of a division of the Commission in any proceeding shall be considered administratively final except . . . those wherein the initial decision is made by a division."

The decision denying the petition of ABF to intervene was an intial decision made by the Division. ABF did not file any petition for rehearing of that aspect of the order and thus did not exhaust its administrative remedies.

ABF had knowledge of the proposed unification of Bowman's Sub-No. 56 routes and the AHE routes from the proceedings herein and from two other official sources, (1) the November 1, 1967 FR notice of the Bowman/AHE transaction, and (2) the November 19, 1969 report recommended by the Herrin hearing officers. Notwithstanding this knowledge, ABF took no steps in the period 1967-1972 to oppose the Bowman/AHE acquisition or to re-enter the Bowman Sub-No. 56 case. During that same period ABF acquired Youngblood. Then, when the Herrin case was drawing to a close after almost eight years of I. C. C. handling and under a FR notice in which it had no valid interest, ABF sought to re-enter and reopen this proceeding to evidence the very changes it had for four years silently observed take place.

The Commission justifiably refused the request. As ABF sought no relief relevant to the public notice upon which it purported to act, the Commission validly declined to delay disposition of a proceeding then in its eighth year of processing. Moreover, the relief actually sought by ABF was simply that the I. C. C. rehear the Bowman Sub-No. 56 case in light of Bowman's 1968 acquisition of AHE and ABF's 1971 acquisition of Youngblood. But the Herrin hearing officers had noted and the agency's decision had given effect to the Bowman/AHE purchase. ABF itself was responsible for the lack of notoriety regarding the ABF/Youngblood purchase and, in any event, that purchase has no relevancy to the Bowman award at Montgomery, Ala.

Requests for rehearing in administrative proceedings are not a matter of right, but a plea to discretion; and the discretion to be invoked is that of the body making the order and not the reviewing body. United

States v. Interstate Commerce Commission, 396 U.S. 491, 90 S. Ct. 708, 24 L. Ed. 2d 700 (1970); Watkins Motor Lines, Inc. v. United States, 243 F. Supp. 436 (D. Neb. 1965); Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp. 894 (D. Colo. 1963). A denial of further hearing is not open to attack unless in "clear abuse" of discretionary authority. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821 (1946).

THE ISSUE OF ECONOMIC MUTUAL EXCLUSIVITY

On August 18, 1972, eight months after the Division Order, a group of the protestants filed a petition under Commission Rule 102 seeking to consolidate all of the applications in the subject proceeding with those in two other unrelated proceedings, East Texas Motor Freight (Sub-No. 103) and Bell Transfer (Sub-No. 6). In that petition, they raised, for the first time, an issue of economic mutual exclusivity, claiming that it is a natural extension of the doctrine articulated by the Supreme Court in Ashbacker Radio Corp. v. F. C. C., 326 U.S. 327 (1946). The Commission denied the petition for the following reasons:

1. The petition failed to meet the condition for filing under Rule 102 which requires that:

> "When the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief. . . and stating the reasons therefor may be served and filed."

The relief sought in the petition is covered by Rule 101 of the Rules of Practice. The petition did not meet the requirements of Rule 101 because the ETMF (Sub-No. 103) proceeding was administratively final when the petition was filed and Subsections (f) and (g) of Rule 101 enunciate Commission policy against entertaining successive petitions by the same parties upon substantially the same grounds as a former petition which has been

considered and denied.

2. The applications of ETMF and Bell were filed one and two years, respectively, after oral hearings in the subject proceedings had been concluded and after the submission of original briefs.

3. The petitioners remained silent throughout the ETMF and Bell proceedings, speculating on the action of the Commission.

4. The subject applications embrace proposed services substantially different in territorial scope from the services proposed by ETMF and Bell.

Research has not disclosed a single case extending the Ashbacker doctrine to motor carrier operating rights proceedings. To the contrary, in Texas-Oklahoma Express, Inc., Ext. -Oklahoma Points, 110 M. C. C. 769, 773 (1969), the Commission declared that the Ashbacker doctrine does not ordinarily extend to such proceedings:

> "Applications for motor carrier operating rights ordinarily do not fall within the ambit of the doctrine established in Ashbacker Radio Corp. v. F. C. C., 326 U.S. 327 (1945), which dictates that, for procedural due process, contemporaneously filed conflicting applications before an administrative agency, such as applications for a radio station license before the Federal Communications Commission, must be consolidated for concurrent decision where the applications are for mutually exclusive authority. Applications for the same motor carrier operating rights, unlike applications for the same radio station license, are seldom mutually exclusive since the Commission may grant authority to any number of carriers to perform the same service, provided that a public need is shown therefor. See Great Western Packers Exp. v. U.S. and I. C. C., 263 F. Supp. 347 (D. Colo. 1966). The Commission's right to consider an application separately or in combination with other applications is a well established matter of administrative discretion, and the Commission's decision in this respect is based upon the concept of fairness of opportunity to all parties involved, the effective procedures of the Commission, and the public interest. Alterman Transport Lines, Inc., Ext. -

Hastings, Nebr., 94 M.C.C. 421, 423."

In Great Western Packers Express, Inc. v. United States, 263 F. Supp. 347, 350 (D. Colo. 1966), the Court concluded that it would be "stretching" the Ashbacker doctrine to apply it to the motor carrier applications involved, stating:

> "Clearly this is not a facility which can be granted to only one. Numerous truck lines operate economically in the same areas and in this instance each of the individuals has its own particular following in its individual area of influence. Moreover, the services to be rendered are not identical, nor are the cities or states sought to be served identical. Watkins and Curtis sought authority in several states. Furthermore, the Commission granted different authority to Curtis and Watkins from that granted to Digby."

Assuming, arguendo, that the applications were identical and one would be mutually exclusive of the other (which is exactly contrary to the facts), Ashbacker would not apply since the "cutoff date" recognized in Century Broadcasting Corp. v. F.C.C., 310 F.2d 864, has long since passed. In fact, any Ashbacker requirement for consolidation was met and fully satisfied when the ten applications involved in the subject proceeding were, in fact, consolidated.

Applications under Section 207 of the Interstate Commerce Act are not mutually exclusive since the Commission may grant authority to any number of carriers to perform service over any number of routes traversing the same and different cities, provided that a public need is shown therefor.

THE PRIMARY CONSIDERATION OF THE COMMISSION

In Central Motor Lines, Inc. v. United States, 309 F. Supp. 336 (W.D.N.C. 1969), the Court considered facts analogous to this proceeding. There, the Court stated:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if

> the Commission's decision has a rational basis, rather than to second guess the Commission itself. The primary consideration is the interest of the public - not the relative economic advantage of competing carriers."

The Court noted that the primary question before the Court was whether the decision of the Commission is:

> ". . . supported by substantial evidence on the record considered as a whole . . . free from errors of law . . . and . . . not so arbitrary or capricious as to constitute an abuse of discretion."

and that:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if the Commission's decision has a rational basis, rather than to second guess the wisdom of the Commission itself."

In Carolina Freight Carriers v. United States, 297 F. Supp 848 (1969), the plaintiff sought to set aside an order of the Commission granting a certificate to Alterman Transport Lines, Inc. to transport general commodities, with usual exceptions, between Charlotte, N. C. and Florida. The Court affirmed the Commission, noting:

> "The question before the three judge court is whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a view of the record as a whole."

and stated that:

> "If public convenience and necessity are found by the Commission to justify more and more alert competition (which on the record is clearly shown by substantial evidence) it is not grounds for objection that some of the protesting carriers might lose revenue."

In Superior Trucking Company v. United States, 306 F. Supp. 872 (N. D. Ga. 1969), another court held that loss of profits to existing carriers was no justification for denying the introduction of superior, competing service. The Court stated:

> ". . . The implementation of a new common carrier service may well inject an additional

> competitive element into plaintiffs' business, but this in itself affords no grounds for refusal to grant the certificate or it would be difficult to ever secure a certificate for new service."

Our attention has not been directed to any finding of fact that does not have substantial support in the record. Rather, the principal thrust of plaintiffs' argument is that greater weight should have been given to some of the testimony and exhibits and less weight to some of the testimony and exhibits of applicants and shippers, and that overall they have been rendering a satisfactory service between the involved areas. As we have noted, the weight to be given the evidence is a matter principally for the Commission absent arbitrary action which is not reflected in this record. The second argument, if established, is not a bar to Commission approval of additional authority. In a recent case involving some of the parties to this proceeding, the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, at 411-412 (1967), stated:

> "The Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service."

FINDINGS OF FACT

On the basis of the record certified to this Court and following detailed briefs and argument, this Court finds that:

1. The Orders of the Interstate Commerce Commission in Bowman Transportation, Inc., Extension - Dallas, Texas, MC-94201 (Sub-No. 56); Johnson Motor Lines, Extension - Dallas, Texas, MC-106401 (Sub-No. 18) and Red Ball Motor Freight, Inc., Extension - Atlanta, Georgia, MC-22229 (Sub-No. 132), served January 24, 1972 and September 1, 1972 are supported by substantial evidence.

2. The findings of the I.C.C. in the cases cited in paragraph 1

above that present and future public convenience and necessity require operation by these carriers, to the extent approved, is supported by substantial evidence.

3. The weight to be given to transit time studies of applicants, shippers and protestants was for the Commission, absent arbitrary action not here present.

4. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the subject proceeding.

5. The plaintiffs have not been denied due process nor have they suffered any prejudice by intervention of the 41 shippers, Lorch-Westway Corporation, et al.

6. The Orders of the Commission served January 24, 1972 and September 1, 1972 are due to be affirmed.

And the Court makes and applies the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue of this action pursuant to 28 U.S.C.A., Sections 1336, 1398, 2321, 2325 and 2284.

2. The finding of the Commission under 49 U.S.C.A. Section 307 that the present and future public convenience and necessity require approval of the applications of Bowman Transportation, Inc., Johnson Motor Lines, Inc. and Red Ball Motor Freight, Inc. to the extent granted are supported by substantial evidence.

3. The Orders of the Commission served January 24, 1972 and September 1, 1972 were not arbitrary, capricious or an abuse of discretion.

4. The Orders of the Commission in this proceeding served January 24, 1972 and dated September 1, 1972 satisfy the requirements of 49 U.S.C.A. Section 307 and the Administrative Procedure Act.

5. The Commission applied the proper standards to the evidence of record and adequately explained the basis for its decision.

6. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the proceeding.

7. Plaintiffs have not been denied due process nor have they suffered prejudice by intervention of the 41 shippers allowed by the Commission and this Court.

8. The Orders of the Commission served January 24, 1972 and served September 1, 1972 in this proceeding are due to be affirmed.

9. The weight to be given transit time studies of applicants, shipper witnesses and protestants, absent arbitrary action not here found, was for the Commission and its findings with respect thereto where supported by substantial evidence.

WHEREFORE, an order is being entered today dismissing the complaint of plaintiffs and vacating the temporary restraining order.

SO ORDERED. This ____ day of , 1973.

_____

_____

_____

APPENDIX I

Plaintiff's Proposed Findings of Fact and Conclusions of Law served August 16, 1973

IN THE

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

CIVIL ACTION

No. FS 72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., MERCURY MOTORS, INCORPORATED, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC., — PLAINTIFFS,

ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC. OF MISSISSIPPI and JACK COLE-DIXIE HIGHWAY COMPANY, — INTERVENING PLAINTIFFS,

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, — DEFENDANTS,

JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., BOWMAN TRANSPORTATION COMPANY and LORCH-WESTWAY CORPORATION, et al., — INTERVENING DEFENDANTS.

PLAINTIFFS' PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

Plaintiffs and intervening plaintiffs respectfully submit that the Court should adopt the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. NATURE OF PROCEEDING.

1. This is an action to set aside orders of the Interstate Commerce Commission, issued in accordance with its decision in Herrin Transportation Company, Extension - Atlanta, Ga., 114 M.C.C. 571 (decided Dec. 30, 1971) granting extensions of operating authority to three motor common carriers, Red Ball Motor Freight, Inc. [Red Ball], Bowman Transportation, Inc. [Bowman], and Johnson Motor Lines, Inc. [Johnson]. The authority granted authorized such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specified points, generally in the Southeastern and Southwestern portion of the United States. The proceeding is brought pursuant to 28 U.S.C. §§ 1336, 1398, 2284, 2321-25.

B. PARTIES.

2. Each plaintiff and intervening plaintiff is a motor common carrier that participated in the proceeding before the Interstate Commerce Commission as a protestant in opposition to one or more of the applications granted by the Commission. Two of the plaintiffs, namely, Arkansas Best Freight System, Inc. [ABF] and Mercury Motors, Incorporated [Mercury], maintain their principal offices and places of business within the Western District of Arkansas, Fort Smith Division.

3. The action was brought against the United States, pursuant to 28 U.S.C. § 2322. The Interstate Commerce Commission was also named as a defendant. 28 U.S.C. § 2323.

4. The successful applicants before the Commission, Red Ball, Bowman and Johnson, intervened as defendants. Also intervening as defendants in support of Johnson were a group of shippers that had appeared as witnesses before the Commission on behalf of the Johnson

application and who, subsequently, were permitted by the Commission to intervene in support of that application. The interventions here were pursuant to 28 U.S.C. § 2323.

C. PRELIMINARY MATTERS.

5. Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

6. After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., [Jones], on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before this Court.

D. PROCEEDINGS BEFORE THE COMMISSION.

7. In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the

applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the othe applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

8. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D. C., Atlanta, Ga., Dallas and Houston, Tex., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

9. A total of 66 rail and motor carriers entered appearances

in opposition to the applications. Forty-eight of the protestants offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969 - twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

13. Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14. Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15. Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of ABF and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension - Atlanta, Ga., supra.

16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration,

whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

C. THE EXAMINERS' REPORT.

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communties along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal. A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points,

particularly the more distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

20. Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive

clothing, the first commo ity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p. 6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their

delivery requirements." The Examiners considered significant the fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

". . . Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were - - selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportion service by protestants, applicants, as well as other carriers. They also reflect instances of good service.

. . .

"The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the

Commission, however, the Examiners noted that:

> "Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 675, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies . . . must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals

would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that a diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points . . . which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffice from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

"The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).

". . . remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31)

". . . the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

D. THE EXCEPTIONS.

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

E. THE DIVISION REPORT.

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of the supporting witnesses' needs in these proceedings . . . can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36. It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings . . . of the Hearing Officers . . . but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson Brief, p. 21; Government Brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the

report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37. The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

38. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2) (A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of

testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

41. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriatness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have

disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42. The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments,

and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in an appendix; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took

official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however, the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

46. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering

the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here proposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers."

Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

48. As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49. In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50. The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [44 In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such

grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co.--Ext.--Lake Mills, Wis., 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611.

51. The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52. The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53. The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

F. OTHER MATTERS.

54. Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55. The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested

parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier ~~can~~ normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating ". . . with that authority previously granted . . . wherein applicant is authorized to serve points in . . ." and named sixteen (16) states and the District of Columbia. The states of Illinois, Indiana and Ohio were not named in the Federal Register Publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the

authority sought in the present proceeding to authority subsequently acquired. Subsequent to the publishing of the "Notice", Bowman acquired Alabama Highway Express which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the Alabama Highway Express purchase and that acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register Publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed. 2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This Court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States (1966) 256 F.Supp. 257, 264; Reddish v. United States (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed. 2d 147. As this Court stated in Patterson v. United States (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing Court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States (Del. 1969) 301 F.Supp. 310, 319,"in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed. 2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed. 2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States (Mo. 1964) 231 F.Supp. 968, 970.

4. In Overton Park, supra, the Court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The Court cited L. Jaffe, Judicial Control of Administrative Action (1965).

Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> ". . . Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work. . . ."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added). This terminology, and the above authorities, clearly recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the Court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party . . . ." 5 U.S.C. § 706. Although some question concerning the Court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

". . . This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear. . . ." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this Court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The Court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Examiners' report as well as to the findings embodied in the Division's report, as we are required to do under Universal Camera Corp., supra.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this Court to confine its review to a determination of the substantiality of such portions of the

evidence. The Court rejects this suggestion. Our duty is to review "the record in its entirety . . . including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U. S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States (W.D. Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925 (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board (1 Cir. 1964 , 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by

protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C., at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." Mary Carter Paint Co. v. F.T.C. (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. PC&D Moving & Storage Company v. United States (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the Court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U. S. Sup. Ct. Oct. 24, 1972. In its first decision the Court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged. . . . and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D. Pa. 1954)."

In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no countervailing evidence" as to their representativeness. This Court agrees with the Court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R. R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The Court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were

made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La. (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo. (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers

would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the Court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The Court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The Court relied upon Eastern and Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the Court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the Court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the Court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta (1966) 100 M.C.C. 482, but in that case the Commission found that:

> ". . . most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that

reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the Court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record would have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the orders of the Interstate Commerce Commission issued in Docket No. MC-1124 (Sub No. 206), styled Herrin Transportation Company Extension - Atlanta, Ga., to the extent that they authorize the

issuance of certificates of public convenience and necessity to Red Ball Motor Freight, Inc., Bowman Transportation Company and Johnson Motor Lines, Inc., be, and are hereby, set aside and declared to be void.

APPENDIX J

Order and Judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, in Arkansas-Best Freight System, Inc., et al v. United States of America and Interstate Commerce Commission and Red Ball Motor Freight, Inc., et al, entered September 11, 1973.

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., An Arkansas Corporation, MERCURY MOTORS, INC., an Arkansas Corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,	)	
Plaintiffs,	)	
ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,	)	
Intervening Plaintiffs,	)	
v.	)	NO. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)	
Defendants,	)	
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,	)	
Intervening Defendants.	)	

JUDGMENT

On this 11th day of September, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

U. S. District Court
Eastern Dist. Arkansas
FILED
SEP 11 1973
Riddle, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
SEP 11 1973
E. A. [illegible], Clerk
By Marguerite Mann
Deputy Clerk

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ET&WNC TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

No. FS-72-C-65

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

JOHN E. MILLER, Senior District Judge

The plaintiffs, 19 in number, bring this action to set aside, vacate, suspend, enjoin and annul that portion of the order of the Interstate Commerce Commission (ICC) that authorizes the issuance of a Certificate of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132), to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56), and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18) (hereinafter referred to as Red Ball, Bowman and Johnson, respectively, or applicants collectively). The applications were consolidated with others under Docket No. MC-1124 (Sub-No.206) which was initially entitled "Herrin Transportation Company, Extension-Atlanta, Ga.," and was re-entitled "McLean Trucking Company, Extension-Atlanta,Ga."

This action was commenced pursuant to 28 U.S.C.A. § 1336, conferring jurisdiction upon this court, and §§ 2284 and 2321 through 2325, inclusive, of said Title, together with 49 U.S.C.A. §§ 305(g), 305(h), and 5 U.S.C.A. §§ 701 through 706, the Administrative Procedure Act, all providing for the procedure herein.

Venue exists under 28 U.S.C.A. § 1938, since plaintiffs Ark ansas-Best Freight System, Inc., and Mercury Motors, Inc., are residents of and maintain their principal offices and places of business in Fort Smith, Arkansas.

On October 12, 1972, Red Ball, upon motion was allowed to intervene as a party defendant, and on October 12 it filed its original answer, and on December 4, 1972, filed its first amended answer. In the first amended answer, it alleged that the Commission entered an order on October 6, 1972, denying the petitionsof plaintiffs seeking a finding that an issue of general transportation importance is involved in the proceeding.

On October 12, 1972, the court, upon motion, allowed Johnson to intervene as a defendant, and on the same day it filed its answer in which it denied that certain of the plaintiffs had appeared as protestants in opposition to the granting of the operating authority applied for by it.

On October 25, 1972, Bowman, upon motion, was allowed to intervene as a defendant, and on the same date it filed its answer, in which it alleged that certain of the plaintiffs did not file a petition for reconsideration in the proceedings.

On October 31, 1972, the court, upon motion, granted Roadway Express, Inc., and Roadway Express, Inc., of Mississippi permission for leave to intervene as plaintiffs.

On November 1, 1972, the court allowed a group of shippers, 41 in number, who had appeared as witnesses before the Commission on behalf of the Johnson application, to intervene in support of the application.

On December 4, 1972, defendants USA and ICC filed their joint answer.

On January 2, 1973, the court, upon motion, granted Jack Cole-Dixie Highway Company leave to intervene in support of the plaintiffs' complaint.

The authority granted Red Ball, Bowman and Johnson authorizes such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specific points, generally in the Southeastern and Southwestern portions of the United States. Each plaintiff and intervening plaintiff is a motor carrier that participated in the proceedings before the Commission as a protestant in opposition to one or more of the applications granted by the Commission.

Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C.A. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension-Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before the court. (Appendix A.)

In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met

by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

8. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D.C., Atlanta, Ga., Dallas and Houston, Texas., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

9. A total of 66 rail and motor carriers entered appearances in opposition to the applications. Forty-eight of the protestants

offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969, twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

13 Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14 Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15 Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of Arkansas-Best Freight and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension-Atlanta, Ga., supra.

16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration, whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth.

C. THE EXAMINERS' REPORT

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' Report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between

points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communities along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal.

A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points, particularly the most distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

20. Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p.6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their delivery requirements." The Examiners considered significant the

fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving

overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

> " * * * Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportation service by protestants, applicants, as well as other carriers. They also reflect instances of good service.
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> * * * *
>
> "The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to

them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the Commission, however, the Examiners noted that:

> "Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies * * * must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points * * * which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas

eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

> "The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).
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> " * * * remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31).
>
> " * * * the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the

carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

D. THE EXCEPTIONS

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

E. THE DIVISION REPORT

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of

the supporting witnesses' needs in these proceedings * * * can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36. It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings * * * of the Hearing Officers * * * but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson brief, p. 21; Government brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37. The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this

issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

38. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of

testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

4. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of

such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto, (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42. The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's

on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating

tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however,

the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

46. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and

Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here proposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers." Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

48. As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration

of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49 In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50 The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [[44]In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co. Ext.--Lake Mills, Wis., 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweight any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611."

51. The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52. The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53. The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

F. OTHER MATTERS

54. Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55. The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests

in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating " * * * with that authority previously granted * * * wherein applicant is authorized to serve points in * * *" and named sixteen (16) states and the District of Columbia. The States of Illinois, Indiana and Ohio were not named in the Federal Register publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the authority sought in the present proceedings to authority subsequently acquired. Subsequent to the publishing of the "Notice," Bowman acquired Alabama Highway Express

which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

CONCLUSIONS OF LAW

1. This court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence.

Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, (1966) 256 F.Supp. 257, 264; Reddish v. United States, (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed.2d 147. As this court stated in Patterson v. United States, (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C.W.D. Mo. 1955, 134 F.Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States, (Del. 1969) 301 F.Supp. 310, 319, "in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary,

capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed.2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States, (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed.2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States, (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc.v. United States, (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States, (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States, (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States, (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States, (Mo. 1964) 231 F.Supp. 968,970.

4. In Overton Park, supra, the court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The court cited L. Jaffe, Judicial Control of Administrative Action (1965). Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> "* * * Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work."

In Burlington Truck Lines, Inc., v. United States, (1962) 371 U.S. 156, 83 S.Ct.239, 9 L.Ed.2d 207, the court at page 245 of 83 S.Ct. said:

> "Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884, 72 S.Ct. 152, 153, 96 L.Ed. 662 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' Federal Communications Comm'n v. RCA Communications, Inc., 346 U.S.86, 90, 73 S.Ct. 998, 1002, 97 L.Ed.1470. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare id., at 91, 73 S.Ct. at 1002, 97 L.Ed. 1470. And for the courts to determine whether the agency has done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. Interstate Commerce Comm'n v. J-T Transport Co., 368 U.S. 81, 93, 82 S.Ct. 204, 211, 7 L.Ed.2d 147; United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 488-489, 62 S.Ct. 722, 729, 86 L.Ed. 971; United States v. Chicago, M., St.P. & P.R. Co., 294 U.S. 499, 511, 55 S.Ct. 462, 79 L.Ed. 1023."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (Emphasis added.) This terminology and the above authorities clearly recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party * * *." 5 U.S.C. § 706. Although some question concerning the court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

> " * * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any

party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Division's report as well as to the findings embodied in the Division's report. This procedure was fully discussed in Universal Camera Corp., supra, where the court at page 496 of 340 U.S. said:

> "We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other facts which in sum determine whether evidence is 'substantial.'"

See, also, Bituminous Material & Supply Co. v. N.L.R.B., (8 Cir. 1960) 281 F.2d 365.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this court to confine its review to a determination of the substantiality of such portions of the

evidence. The court rejects this suggestion. Our duty is to review "the record in its entirety * * * including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U.S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States, (W.D.Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925, (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board,

(1 Cir. 1964) 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes aribtrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified

shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case. Mary Carter Paint Co. v. F.T.C., (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States, (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were

entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States, (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U.S. Sup. Ct. Oct. 24, 1972. In its first decision the court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged * * * and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D.Pa. 1954)."

In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R.R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal

described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to

protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La., (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo., (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury ((another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceedding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta andBaton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision.

West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States, (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by

protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The court relied upon Eastern and Nashua Motor Express, Inc. v. United States, (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta, (1966) 100 M.C.C. 482, but in that case the Commission found that:

> " * * * most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States, (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419,81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman

application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the

Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

Judgment is being entered today permanently suspending, annulling and setting aside the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); declaring said orders to be void; and permanently restraining and enjoining the Commission from issuing said Certificates of Public Convenience and Necessity.

This ___ day of September, 1973.

Pat Mehaffy
United States Circuit Judge

JNO. E. MILLER
U. S. Senior District Judge

PAUL X. WILLIAMS
United States District Judge

APPENDIX A

Status of Jones Truck Lines, Inc.

Jones Truck Lines, Inc. (Jones), MC-111231 (Sub-No. 67) filed on June 14, 1965, its application for extension of its present authority (1) between Atlanta, Ga., and Texarkana, Ark., (and intermediate points between Birmingham and Greenville, Miss., and on U.S. 82 in Arkansas); (2) between Texarkana, Ark., and Sherman, Texas, (and all intermediate points); (3) between Birmingham, Ala., and Memphis, Tenn., (no intermediate points); and (4) between Texarkana, Ark., and Dallas, Texas (all intermediate points). Service was restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone, but not on traffic moving through Memphis and its commercial zone on the one hand, and on the other, points east of the Mississippi River.

Throughout the hearings in the consolidated applications, Herrin Transportation Co., MC-1124 (Sub-No. 206), Jones, Bowman and Johnson were commonly referred to as "The Trinity," and filed with the court a joint abstract of the evidence in behalf of "The Trinity," containing seven large volumes. The application was submitted to the Hearing Examiners along with the other nine applications, and all were denied on the ground that the applicants had failed to establish that the present or future public convenience and necessity require the operations proposed in their respective applications.

In reviewing the report and recommendations of the Hearing Examiners, served Nov. 19, 1969, Division 1 at page 601 of Exhibit 1 to the original complaint, stated: "(c) there is not, in our opinion, sufficient traffic to sustain all of the additional

motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest."

In its findings of fact the Commission at page 612 found that Jones, along with other applicants, had failed to establish the present and future public convenience and necessity, and that the applications should be denied. Accordingly, on December 30, 1971, the Commission granted only the applications of Red Ball, Bowman and Johnson, and denied all others.

Jones petitioned the Commission to reopen the hearing, and on September 6, 1972, the petition was granted and the application reopened for further hearing. In the petition Jones contended that there is a need for some additional services and that the volume of traffic shown to be moving would not sustain the added services and operations proposed by eight applicants; that Jones' application should be granted either in addition to those granted, or in lieu of the grant of authority to Red Ball; that that in choosing Red Ball over Jones, the Commission failed to appreciate that the two carriers served different areas; that Jones received more support from connecting carriers than any of the other applicants; that only nine carriers remain as active protestants to the Jones application, and that these are nine of the largest carriers in the United States, and therefore a grant of authority to Jones would not materially affect their operations, and that the grants to Red Ball, Bowman and Johnson without a grant to Jones "strikes a death blow to one of the oldest carriers in the Midwest Central South."

A number of protestants replied to Jones' petition, and charged that the thrust of Jones' petition is that a grant of its application should be based upon the number of witnesses produced rather than upon probative evidence of public need or adequacy of existing service.

Upon the reconsideration, the Commission on December 6, 1972, decided that its order of December 30, 1971, denying the application should be set aside and Jones should be granted authority with certain restrictions.

It is interesting to note that according to Exhibit 1 to the original complaint, Division 1 of the Commission was composed of Commissioners Murphy, Deason and Gresham. Division 1, acting as an Appellate Division, on the date the former report and order were considered, was composed of Commissioners Murphy, Hardin and Gresham. The order of December 6, 1972, reveals that Commissioner Hardin dissented. In his dissent he stated:

"Commencing with my initial review of the record in the consolidated Herrin case, which review occurred prior to the entry of the September 1, 1972, order [the order in which an Appellate Division denied and disposed of certain pleadings as therein set forth] referred to in footnote 5 to the majority report, I became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications. Therefore, I did not approve the September 1, 1972, order. Further, I did not approve the entry of the October 2, 1972, order, also referred to in footnote 5, wherein a majority of the Commission determined that this massive consolidated proceeding involving 'what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission,' did not involve issues of general transportation importance.

"I remain of the opinion that the applications of Red Ball, Bowman, and Johnson granted in the Herrin case should be denied. Most certainly, the record will not support the grant of any authority to Jones. Accordingly, I dissent."

On June 29, 1973, the plaintiffs filed their motion in this court for leave to serve and file a supplemental complaint pursuant to Rule 15(d), Fed.R.Civ.P. In the motion plaintiffs referred to the allegations contained in their original complaint filed October 5, 1972, and the prayers for relief contained therein; that subsequent to the filing of the original complaint, the ICC had caused to be issued three additional orders which affect and are material to the issues in this cause. The purpose of the supplemental complaint was to bring before the court for review the subsequent orders and reports issued by the Commission, and for the same relief against the defendants as prayed for in the original complaint, and seeks to set aside, vacate, suspend, enjoin and annul those orders subsequently entered in Docket No. MC-111231 (Sub-No. 67) that would authorize the issuance of an additional Certificate of Public Convenience and Necessity as described therein. A copy of the proposed supplemental complaint was attached to the motion, which contains various allegations and plaintiffs' contentions, and prays that the court issue a temporary restraining order to remain in force and effect until a hearing and determination by the court, and to prevent the report and orders of the Commission from becoming final and effective; to prevent the Commission from issuance of a Certificate of Public Convenience and Necessity to Jones, and that upon a final hearing and determination of the action, that the Commission be permanently enjoined and prohibited from issuing of the Certificates to successful applicants, or in the alternative, that the matter be remanded to the Commission for appropriate action under the applicable facts and law.

On the same day the motion was filed, the court ordered that a full hearing on the motion and other incidental questions that may arise therein or therefrom be held at Fort Smith, Ark., beginning at 10:00 a.m. on Tuesday, July 24, 1973. On July 16, 1973, a motion of intervening defendant ~~Jones~~ Johnson was filed to dissolve the temporary restraining order; to convene a three-judge court to hear and determine plaintiffs application for preliminary injunction and motion to file supplemental complaint.

On July 19, 1973, Daisy Manufacturing Company and 69 others filed a motion to intervene as defendants, and if allowed to intervene, to oppose the motion to file supplemental complaint, and if supplemental complaint is allowed to be filed, that they be allowed to file a motion to dismiss the complaint, and to intervene to oppose granting of any temporary restraining order against the issuance of the Jones certificate, and if the court allows the filing of the supplemental complaint and they do not prevail upon their motion to dismiss, that they be allowed to file answer.

On July 23, 1973, Johnson also filed a pleading termed "Opposition to Plaintiffs' Motion to File Supplemental Complaint." On the same date, Red Ball filed its motion to dissolve the temporary restraining order entered November 7, 1972 (350 F.Supp. 545) and to grant plaintiffs' application for preliminary injunction and to dismiss the motion to file supplemental complaint.

Early on the day of the hearing, July 24, Bowman filed its objections to the motion of plaintiffs to file a supplemental complaint.

All of the motions and objections were argued orally by the attorneys for the various parties, and were submitted "upon the complete record heretofore filed in this case, together with

all exhibits, briefs and arguments of counsel for the various parties." At the conclusion of the hearing the court entered an order denying the motion without prejudice.

Following the overruling of the motion of plaintiffs to file supplemental complaint, the attorney for Jones was allowed to and did withdraw all motions filed by intervenor Daisy Manufacturing Company.

APPENDIX K

Motion of the United States of America and the Interstate Commerce Commission for Amendment of Judgment and Memorandum in Support thereof filed September 17, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION Defendants, and RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR FREIGHT INC., and BOWMAN TRANSPORTATION INC., Intervening Defendants.	Civil Action No. FS-72-C-65

MOTION OF THE UNITED STATES OF AMERICA AND
THE INTERSTATE COMMERCE COMMISSION
FOR AMENDMENT OF JUDGMENT

Pursuant to Rule 59 of the Federal Rules of Civil procedure, the United States of America and the Interstate Commerce Commission move that the judgment, entered in this action on September 11, 1973, which sets aside orders of the Interstate Commerce Commission and, instead of remanding the proceeding, permanently enjoins the issuance of certificates of public convenience and necessity, be amended for the reason that such form of judgment is a matter beyond the jurisdiction of the Court in the circumstances presented.

The basis for this Motion is more fully explained in the Memorandum attached

Respectfully submitted,

THOMAS E. KAUPER
Assistant Attorney General

HOWARD E. SHAPIRO
Attorney
Department of Justice
Washington, D.C. 20530

ROBERT H. JOHNSON
United States Attorney
Fort Smith, Arkansas

Attorneys for the United States of America

ARTHUR J. CERRA
Acting General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of September, 1970 I served true copies of the foregoing Motion Of The United States Of America And The Interstate Commerce Commission For Amendment Of Judgment on counsel for all parties of record by first-class airmail, postage prepaid.

SEYMOUR GLANZER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Defendants,

and

RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and COMAN TRANSPORTATION INC.,

Intervening Defendants,

Civil Action No.
FS-72-C-65

MEMORANDUM OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION IN SUPPORT OF THE MOTION FOR AMENDMENT OF JUDGMENT

This case involves the validity of orders of the Interstate Commerce Commission which authorized the issuance of three certificates of public convenience and necessity. The judgment of this Court, entered September 11, 1973, in accordance with its opinion of September 11, 1973, provides that, "the orders of the Interstate Commerce Commission . . . be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of Public Convenience and Necessity." We respectfully submit that, insofar as the judgment permanently enjoins the issuance of the certificates, it is beyond the power of the Court.

In its opinion, the Court explained its basis for not remanding the proceeding for further consideration by the Commission at Paragraph 29 of the Conclusions of Law. That paragraph reads as follows:

> There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity". For this reason and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

We respectfully submit that it is beyond the province of the Court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity. Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., 379 U.S. 642, 543 (1965); United States v. Sasketchewan Minerals, 385 U.S. 94, 95 (1966).

The Supreme Court succinctly explained the "guiding principle" which governs judicial review of agency proceedings in Federal Power Commission v. Idaho Power Co., 344 U.S. 17, 20 (1952): 4/

> the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration.

This precept fits this case-for it is well established that the legislative delegation to decide the issue of public convenience and necessity affords "administrative discretion to the Commission to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945).

The present case is like Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., supra. There, too, the District Court had "set aside and permanently enjoined the operation, enforcement and execution" of a Commission order. The Supreme Court summarily vacated the judgment of the District Court

...ions of the District Court to remand the case to ...sion for reconsideration in the light of the District ...determination.

We respectfully submit that under the "guidin... ...of the above cited cases, the judgment of this ... ...the exercise of an essentially administrative ...tion and thereby exceeds the authority of a reviewing ...rt. We suggest that the opinion be modified and the ...gment be amended, substantially, as follows:

> The matter is remanded to the Commission for further proceedings consistent with this opinion.

Respectfully submitted,

...AS E. KAUPER
...istant Attorney General

HOWARD E. SHAPIRO
Attorney
Department of Justice
Washington, D.C. 20530

...ERT K. JOHNSON
...ited States Attorney
...t Smith, Arkansas

Attorneys for the United States of America

...MES J. CERRA
...ting General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 2423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of ...ptember, 1973 I served true copies of the foregoing ...morandum Of The United States Of America And The Inter-...ate Commerce Commission In Support Of The Motion For ...ument Of Judgment on counsel for all parties of record ... first-class airmail, postage prepaid

SEYMOUR GLANZER

APPENDIX L

Notice of Appeal to the Supreme Court of the United States filed by Johnson Motor Lines, Inc. on September 27, 1973.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

SEP 27 1973

CIVIL ACTION NO. FS-72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

V.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC., and
LORCH-WESTWAY CORP., et al.,

Intervening Defendants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Johnson Motor Lines, Inc., the intervening defendant named above, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on September 11, 1973.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully,

Donald E. Cross
918 - 16th Street, N.W.
Washington, D. C. 20006

Robert L. Jones, Jr.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Counsel for Intervening Defendant
Johnson Motor Lines, Inc.

Of Counsel:

Rea, Cross & Knebel
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

Jones, Gilbreath & Jones
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

APPENDIX M

Notices of Appeal to the Supreme Court of the United States filed by Bowman Transportation, Inc. on October 2, 1973, from the Order entered on September 11, 1973, and on October 19, 1973, from the Orders entered on September 11, 1973 and October 4, 1973, separately and severally.

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,	)	
PLAINTIFF,	)	
-v-	)	CIVIL ACTION NO.
	)	FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)	
Defendants,	)	
RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al.,	)	
Intervening Defendants.	)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973, and October 4, 1973, separately and severally.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D.C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D.C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D.C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D.C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, TExas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 17th day of October, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al,	)	
Plaintiffs,	)	
-v-	)	CIVIL ACTION NO. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	)	
Defendants,	)	
RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al,	)	
Intervening Defendants.	)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Order entered in this cause by the Three-Judge District Court on September 11, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-03 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
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Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D. C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 30th day of September, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public

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APPENDIX N

Order and Opinion of the United States District Court for the Western District of Arkansas, Fort Smith Division, filed October 4, 1973, overruling and denying the Motion of the United States and Interstate Commerce Commission for amendment of the judgment entered on September 11, 1973.

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

File

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, MERCURY MOTORS, INC., an Arkansas corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., CHANNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC., Plaintiffs,	)	
BROADWAY EXPRESS, INC., BROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY, Intervening Plaintiffs,	)	
v.	)	No. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,	)	
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., NEWMAN TRANSPORTATION, INC., ZURCH-WESTWAY CORPORATION, Intervening Defendants.	)	

ORDER

On this 4th day of October, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the motion of the United States and the Interstate Commerce Commission filed September 17, 1973, for amendment of the judgment entered on September 11, 1973, be and the same is overruled and denied.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, MERCURY MOTORS, INC., an Arkansas corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,

Intervening Defendants.

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk

No. FS-72-C-65

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

OPINION

JOHN E. MILLER, Senior District Judge.

On September 17, 1973, a motion was filed by the United States and the ICC seeking an amendment to the judgment so as to provide that the proceedings which are the subject of this suit be remanded to the ICC for further proceedings.

The sole reason assigned in support of the motion is that the form of judgment entered by this court "is a matter beyond the jurisdiction of the court in the circumstances presented."

In its original opinion of September 11, 1973, the court at page 47 in Section 29 of its Conclusions of Law concluded:

> "There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of 'the present or future public convenience and necessity.' For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission."

Accordingly the court entered a judgment declaring that the orders of the ICC authorizing the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); "be and they are permanently suspended, annulled, and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity."

The suit was filed in this court on October 4, 1972.

The prayer of the complaint is "that upon final hearing and determination of this action, judgment be entered to permanently

suspend, enjoin, annul and set aside the orders of the Defendant Commission herein complained of, and that this court enjoin and prohibit the Interstate Commerce Commission from issuing the Certificates of Public Convenience and Necessity to the so-called successful applicants, or, in the alternative, that the matter be remanded to the Defendant Commission for appropriate action under the applicable facts and law."

During the pendency of the action neither of the moving defendants nor any of the intervening defendants challenged or questioned in any way the jurisdiction and authority of this court to enter such an order. All of the defendants in their answers to the complaint took the position that the relief prayed should not be granted, and none of the defendants or intervenors contended that the complaint requested relief beyond the jurisdiction of the court.

The Interstate Commerce Act, 49 U.S.C., § 17(9), provides that when rehearing or reargument or reconsideration of any decision, order, or requirement of a Division shall have been denied by the Commission or an Appellate Division that a suit "to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise." This provision of the act was made applicable to motor carrier proceedings by 49 U.S.C., §§ 305(g) and (h).

The Administrative Procedure Act, 5 U.S.C., § 706, provides that the reviewing court shall "compel agency action unlawfully withheld" and "hold unlawful and set aside agency action,

findings, and conclusions found to be * * * arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Title 28, U.S.C., § 1336(a), provides that the District Courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Title 28, U.S.C., § 2325, requires that an "interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission, be granted only by a three-judge court."

Soon after the suit was filed there was a hearing before a single Judge of this court, and a temporary restraining order was issued pursuant to 28 U.S.C., § 2284(3). Arkansas-Best Freight System, Inc., v. United States, (1972) 350 F.Supp. 539. No one contended at that hearing that the Judge was without authority to issue the temporary restraining order, and there is no statute which by its provisions prevents a three-judge court on a hearing on the merits from issuing a permanent injunction.

The movants argue that it is beyond the province of the court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity, and cite and rely upon four cases in support of that argument. None of the cases reveal any extraordinary facts as does the present record. The cases relied upon by movants may be summarized as follows:

Arrow Transportation Co. v. Cincinnati, N.O. & T.P. R. Co., (1965) 379 U.S. 642, 85 S.Ct. 610, 13 L.Ed.2d 550. This case is clearly distinguishable. In Arrow the District Court entered an

opinion and order, 229 F.Supp. 572 (S.D. Ohio 1967), setting aside the agency order without giving any explanation whatsoever why the proceeding was not being remanded to the agency. In a per curiam opinion the Supreme Court directed that the proceeding be remanded to the Commission, citing only to Idaho Power Co., hereinafter discussed.

United States v. Sasketchewan Minerals, (1966) 385 U.S. 94, 85 S.Ct. 254, 17 L.Ed.2d 192. In this case the District Court did remand the proceeding to the Commission. 253 F.Supp. 504, 509 (W.D.Wis. 1965). However, its order of remand set forth unusually strict guidelines circumscribing the scope of the agency's consideration of the proceeding on remand. On appeal the Supreme Court stated that the District Court went too far, stating: "Under the circumstances present here, this restriction is an improper limitation on the Commission's duty to reconsider the entire case." 385 U.S. 95, 17 L.Ed.2d 193.

Federal Power Commission v. Idaho Power Co., (1952) 344 U.S. 17, 73 S.Ct. 85, 97 L.Ed. 15. This is the principal case relied upon by movants. A quotation from this case appears on page 2 of movants' memorandum, but it is significant to note that movants fail to point out that the statement quoted was characterized by the Court only as a "guiding principle." The statement is, by no means, an inflexible rule applicable to all proceedings. As hereinafter demonstrated, many cases recognize and apply the reciprocal of this "guiding principle," that is, that a remand will not be ordered unless it appears that it would serve a useful purpose in furtherance of the ends of justice.

Interstate Commerce Commission v. Parker, (1945) 326 U.S. 60, 65 S.Ct.1490, 89 L.Ed. 2051. This case has nothing to do with

the issue now before the court. It deals only with the broad principles applicable to the Commission's basic determination of the issue of public convenience and necessity.

The court readily recognizes that, in a proper situation, a reviewing court should remand a proceeding to the Commission for further consideration and disposition by the Commission. The situation before this court, however, does not justify such action and, indeed, would not be consistent with orderly procedure nor would it further the ends of justice. The record in this case is voluminous. We are here concerned with the application of three carriers, whereas the record that would be sent back to the Commission on remand deals with the applications of ten carriers.

During the last arguments before the court, a member of the court asked counsel for defendant Johnson if large portions of the record were wholly unrelated to the applications before the court. Counsel acknowledged that this was correct. Indeed, there are tremendous portions of this record that are wholly unrelated to the applications of Red Ball, Bowman and Johnson. This is a unique situation resulting from the Commission's consolidation of ten major applications, and is a significant fact bearing upon the court's consideration of the Government's motion. The law requires the court to note and consider the uniqueness of the situation.

Since such a large part of the record is unrelated to these applications, a remand of this record would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity. In like manner, if a second court review should later be required, the reviewing court would then be confronted

with such a massive record, containing ancient facts, no feasible review of such record could be made.

The court's opinion makes it abundantly clear that the Commission could not, on this record, enter a valid order approving these applications. Accordingly, a new record is required before any valid grant of authority could be made to these carriers.

These applications were filed with the Commission in 1965 and the hearing began in 1966 and ended in 1967. As stated in the court's opinion (p. 47), "the facts developed in this record have little bearing on a determination at this time of 'the present or future public convenience and necessity.'"

This court has concluded that the evidence of record before the Commission did not justify or support the Commission's grant of authority embodied in the orders reviewed by the court. That finding is not challenged by the motion now before the court. The motion suggests only that the proceeding must (not should) be sent back to the Commission. If this were to be done, the Commission would have before it an extensive record dealing with five and six year old facts. It is apparent, as a matter of law, that such facts could not lawfully support a finding of public need for additional motor carrier service in 1973 or 1974. As pointed out in the court's opinion, there has been a drastic change in circumstances since the record was closed in 1967. For example, evidence relating to service rendered in 1965 and 1966 by three single-line carriers between Atlanta and Dallas would be of no value whatsoever to a determination of the adequacy or inadequacy of service presently rendered by the 13 single-line carriers now authorized to operate between these cities. These facts are discussed on pages 26-27 and 42-44 of the court's opinion. Since, as pointed out on

page 43 of the opinion, the Commission is obligated to consider recent grants of authority, no valid consideration of these applications could be made without giving effect to the extensive changes that have occurred since 1967.

If applicants Red Ball, Bowman and Johnson are still of the opinion that the present or future public convenience and necessity justify and require approval of their applications, the obvious answer is that they should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts.

The Government's motion states that this court's judgment of September 11, 1973, "permanently enjoins the issuance of certificates of public convenience and necessity." This, of course, is a misstatement of the court's action. The judgment referred specifically to the orders of the Commission in the proceedings identified by style and docket number and held that such orders "are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of public convenience and necessity." (Emphasis added.) The only certificates referred to are those that were granted by the specific orders found by this court to be invalid. It is obvious that the Commission stands perfectly free to issue any certificates deemed by the Commission to be appropriate except the three certificates described in the Commission's orders that were set aside by the judgment. Red Ball, Bowman and Johnson stand perfectly free to file new applications tomorrow, and the Commission stands free to issue certificates of public convenience and necessity pursuant

to such applications without any restraint whatsoever by this court.

The Commission has long recognized the inappropriateness of considering a public-convenience-and-necessity application on the basis of facts that have only historical value. For example, in a proceeding involving an application to extend a rail line (which requires proof of public convenience and necessity, 49 U.S.C., § 1(18), (19)), the Commission stated:

> "We cannot see that any useful purpose would be served by a hearing at this time to permit the applicants an opportunity to endeavor to prove that, on the basis of the conditions as they existed in 1927, the issuance of the certificate was proper. Any conclusion we might reach would have to be based on the present and future public convenience and necessity.
>
> " * * * This action does not foreclose the filing of a new application and a hearing thereon at which evidence may be submitted as to whether the present and future public convenience and necessity require the construction which might be proposed." Waco, B., T. & S. Ry. Co. Construction, 254 I.C.C. 327, 337.

Upon a reversal by the court the question whether the proceedings should be remanded to the Commission for further consideration or whether the orders reviewed by the court should be set aside and held for naught depends upon the facts and the statutory scheme involved. In many cases the facts and circumstances as found by the reviewing court and verified by the record disclose that a remand is neither necessary nor proper. The circumstances and facts in the instant case as set forth in the court's opinion conclusively establish that this proceeding should not be remanded to the Commission, and a remand would only create further confusion and result in injustice.

In the consideration of the motion the court has examined several relevant decisions which, in view of the facts and circumstances, require that the motion be denied.

In its opinion this court quoted with approval from the opinion written by District Judge Collinson in Campbell Sixty-Six Express, Inc. v. United States, (W.D. Mo. 1966) 258 F.Supp. 529. The decision in that case is particularly pertinent to the issues discussed by this court in its opinion. It is equally pertinent to the issue presented by the Government's motion. In Campbell the three-judge court was presented with a suit (filed by one of the plaintiffs herein) challenging the validity of an order entered by the ICC granting a Certificate of Public Convenience and Necessity to Roadway Express (another plaintiff herein). In that case, as in the case at bar, the Hearing Examiner denied the application, but a Division of the Commission, while recognizing the correctness of the Examiner's findings of fact, reached a contrary conclusion and granted Roadway's application. The court concluded that the Commission's action was "arbitrary and capricious" and directed that the order of the Commission be "set aside and declared to be void." There was no remand to the Commission, and there was no appeal. Roadway, the applicant in that proceeding, subsequently filed a new application with the Commission and, on the basis of a new and currently adequate record, obtained a certificate.

Pacific Coast Wholesalers' Ass'n v. United States, (S.D. Cal. 1949) 81 F.Supp. 991, was decided by a three-judge court. A suit was filed seeking to set aside an order of the ICC on the ground that there was no rational basis for the Commission's conclusions. The court recognized that "there is evidence of substance to support the Commission's findings of fact," but found the Commission's conclusions "have no rational basis and must be set aside." The exact form of the judgment was that "the same

e hereby set aside and annulled and the enforcement thereof is
eby permanently enjoined." The case was affirmed on appeal,
U.S. 689, 70 S.Ct. 411, 94 L.Ed. 474 (1950). In the per
iam opinion no mention was made of the form of the judgment
ered by the District Court.

A similar result was reached in Shannon v. United
tes, 219 F.Supp. 781 (W.D. Tex. 1963), which was also affirmed
appeal, 377 U.S. 311, 84 S.Ct. 1260, 12 L.Ed.2d 341 (1964).
that case the three-judge court set aside an order of the ICC,
ng the following terminology:

> "There is not substantial evidence in the record upon which to base the Interstate Commerce Commission's findings and conclusions * * * defendants should be permanently enjoined from enforcing the terms of said order * * *."

In Carrett Freightlines, Inc. v. United States,
Idaho 1971) 324 F.Supp. 575, the three-judge court upheld
Commission's order, in part, and set it aside, in part,
ting:

> "It is hereby ordered, adjudged and decreed that the order of the defendant Interstate Commerce Commission * * * granting certain changes in the Certificate of Convenience and Necessity of the applicant therein, be, and the same hereby is, vacated, annulled and set aside."

A similar result was reached in Ashworth Transfer, Inc.,
United States, (D. Utah 1970) 315 F.Supp. 199. And see Pennsyl-
nia R.R. v. United States, (E.D. Pa. 1962) 202 F.Supp. 584,
ere the court permanently enjoined an order of the Commission
ich had cancelled a rate increase. No appeal was taken in Carrett,
worth, or Pennsylvania R.R.

Although the facts and circumstances are quite different,
case of Zuber v. Allen, (1969) 396 U.S. 168, 90 S.Ct. 314, 24
d.2d 345, clearly stands for the proposition that a remand to

the administrative agency is not always required. That proceeding involved an order entered by the Secretary of Agriculture, and the District Court entered a permanent injunction. The Court of Appeals affirmed in an opinion that specifically noted that there was "no readon" to remand the proceeding. 402 F.2d. at 475. The Supreme Court affirmed and, on the question of remand, noted that: "Counsel for the Department has advanced no new theory for sustaining the order." 396 U.S. at 196, 24 L.Ed.2d at 362.

The result reached by the court in the consideration of the motion in the case at bar is fully supported by the reasoning in Office of Communication of the United Church of Christ v. Federal Communications Commission, (CA DC 1969) 425 F.2d 543. That proceeding involved an application by a television station for a renewal of its license. Initially, in a prior appeal, the Court of Appeals had remanded the cause to the Commission. In the case cited, however, the court set aside the Commission's grant of authority and held that an entirely new proceeding should be instituted by the Commission, instead of proceeding any further on the record that was reviewed by the court. In an opinion written by now Chief Justice Burger, the court stated:

> "The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." (Emphasis added.) 425 F.2d at 550.

It is most interesting to observe that the attitude of the Commission in the case above quoted was strikingly similar to the attitude of the Commission in the case at bar. It is also

interesting to note that, in directing the Commission to start over with a new record, the court used the identical terminology utilized by this court in its opinion of September 11, 1973, that is, that "no useful purpose" would be served by remanding the proceeding to the Commission for further review and consideration of the errors described in the court's opinion.

The jurisdiction and power of the reviewing court to set aside and permanently enjoin the enforcement of an order of the ICC was clearly recognized by the Supreme Court in American Trucking Associations, Inc. v. United States, (1960) 364 U.S. 1, 80 S.Ct. 1570, 4 L.Ed.2d 1527. Although the court did conclude that the case should be remanded to the Commission, the court clearly stated in its opinion why it deemed a remand appropriate, "under the particular circumstances of this case." 346 U.S. at 17, 4 L.Ed.2d at 1538. The court made it quite clear that no remand would have been ordered except for "the particular circumstances of this case."

The relationship of the reviewing court and the administrative agency was also discussed in Interstate Commerce Commission v. Atlantic Coastline R. Co., (1966) 383 U.S. 576, 86 S.Ct. 1000, 16 L.Ed.2d 109. There the court was concerned with the problem of when a carrier could file a suit for review of a Commission order under section 17(9) of the Interstate Commerce Act. It recognized that in some instances a remand to the Commission is required, but that in other cases, the court can finally dispose of the matter "without any necessity for a remand to the Commission. 383 U.S. at 601, 16 L.Ed.2d at 127.

Various other decisions also recognize that a reviewing court may or may not remand a proceeding to the Commission, after

concluding that the agency's order is invalid. This was recognized, for example, in Williams v. Washington Metropolitan Area Transit Com'n, (CA DC 1969) 415 F.2d 922, 939-40. In that case the court concluded that remand would be "futile" or "manifestly unwarranted" due to "changed circumstances." In Washington Gas Light Co. v. Baker, (CA DC 1951) 195 F.2d 29, 35, the Court of Appeals held that the District Court went too far with its order of remand and directed the lower court to dispose of all of the issues that could be decided on the record before the court rather than referring such issues for decision to the Commission.

The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid. The motion does not contest the court's ruling that such orders are invalid, and, since such orders are invalid, their enforcement should be enjoined.

The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's prerogative to exercise its administrative functions.

The motion of the United States and the Interstate ommerce Commission filed September 17, 1973, is without merit nd an order overruling and denying said motion is being entered oday.

This 4th day of October, 1973.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

APPENDIX O

Notice of Appeal to the Supreme Court of the United States filed by Red Ball Motor Freight, Inc. on October 10, 1973.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al,

Plaintiffs

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Defendants,

RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al,

Intervening Defendants.

U. S. District Court
Western Dist. Arkansas
FILED
OCT 10 1973
E. A. Riddle, Clerk
By [signature]
Deputy Clerk

CIVIL ACTION NO. FS-72-C-65

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RED BALL MOTOR FREIGHT, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973 and October 4, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

[signature]
Sander M. Shapiro

Attorney for Intervening Defendant, RED BALL MOTOR FREIGHT, INC.

Of Counsel:

CLARK, THOMAS, DENIUS, WINTERS & SHAPIRO
P. O. Box 1148
Austin, Texas 78767

825

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N.W.
Washington, D. C. 20006

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Maurice F. Bishop, Esq.
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 8th day of October, 1973.

Sander W. Shapiro

SWORN TO AND SUBSCRIBED before me, a Notary Public, on the day and year aforesaid.

Frances Colby
Notary Public, Travis County, Texas

APPENDIX P

Notice of Appeal to the Supreme Court of the United States filed by Lorch-Westway Corporation, et al, on November 5, 1973.

IN THE [illegible] COURT FOR

THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

RKANSAS-BEST FREIGHT SYSTEM, INC., al., Plaintiffs, v. NITED STATES OF AMERICA and NTERSTATE COMMERCE COMMISSION, Defendants, ED BALL MOTOR FREIGHT, INC.; OBINSON MOTOR LINES, INC.; OWMAN TRANSPORTATION, INC.; d LORCH-WESTWAY CORP., et al., Intervening Defendants.	Civil Action No. FS-72-C-65

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that LORCH-WESTWAY CORP., et al.*, ntervening Defendants named above, hereby appeal to the Supreme Court f the United States from the Final Orders entered in this cause by the hree-Judge District Court on September 11, 1973, and October 4, 1973, eparately and severally.

---

* Lorch-Westway Corp.; Simmons Co., Southern Division; Dunham-Bush, Inc.; Leff Brothers Dry Goods Co.; Seneca Textile Corp.; Morgan and Lindsey, Inc.; Western Textile Products Co.; Metal Trims, Inc.; Ero, Inc.; Capitol Bolt and Screw Co.; Olinkraft, Inc.; Jantzen Southern, Inc.; S. Klein Division of McCrory Corp.); Monroe Wholesale Drug Co.; Ethyl Corp.; Fanna Barber & Beauty Supply Co.; Stayon Products, Inc.; American Greetings Corp.; Canteen Corp.; Campus Sweater and Sportswear Co.; Walgreen Co.; M. Lowenstein & Sons, Inc.; McNeil Laboratories, Inc.; Congoleum Nairn, Inc.; Her Majesty Underwear Co.; Avco-Bay State Abrasive Products Co.; Tupperwear Co.; Louis Hand, Inc.; Carol Wire & Cable Corp.; Foxboro Co.; Dapol Plastics, Inc. and Worcester Toy Co., Inc.; Berkshire Hathaway, Inc.; Pennsylvania Dutch Co.; Shiny Brite Div. of Poloron Co. (formerly Max Eckardt & Sons, Inc.); Magla Products, Inc.; K S M Division of Omark Industries, Inc.; Warner-Chilcott Laboratories (Division of Warner-Lambert Co.); Monroe International, Inc. (Division of Litton Industries); Becton, Dickinson & Co.; American Cyanamid Co.; and Mississippi Bedding Co.

This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully submitted,

Charles S. Rhyne

Courts Oulahan

Rhyne & Rhyne
400 Hill Building, N.W.
Washington, D.C. 20006
(202) 347-7992

Robert L. Jones, Jr.

412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Attorneys for Intervening Defendants
Lorch-Westway Corporation et al.

Of Counsel:

Jones, Gilbreath & Jones
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Maurice F. Bishop, Esq.
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

John H.D. Wigger, Esq.
Department of Justice
Washington, D.C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D.C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Jerry Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 30th day of October, 1973.

Charles S. Rhyne
Charles S. Rhyne

Sworn to and subscribed before me,
the day and year aforesaid.

Daphne G. Skinner
Notary Public

My Commission Expires [illegible]

APPENDIX Q

Notice of Appeal to the Supreme Court of the United States filed by the United States of America and the Interstate Commerce Commission on November 9, 1973.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation, MERCURY MOTORS, INC., an Arkansas corporation, ARLO EXPRESS, INC., BASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ETOWNE TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC.,	Civil Action
Plaintiffs,	No. FS-72-C-65
ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY,	
Intervening Plaintiffs,	
v.	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	
Defendants,	
RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., ZOLMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION,	
Intervening Defendants.	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the United States of America and the Interstate Commerce Commission, the defendants in the above-styled action, hereby appeal to the Supreme Court of the United States from the judgment of this Court entered

September 11, 1973 and the order of this Court entered October 4, 1973. This appeal is taken pursuant to 28 U.S.C. §§ 1253, 2101.

The entire record in this action is hereby designated for certification and the Clerk of the District Court is requested to prepare and transmit the entire record to the Clerk of the Supreme Court of the United States.

This the 5th day of December, 1973.

JOHN H. D. WIGGER
Attorney
Department of Justice
Washington, D.C. 20530

THOMAS E. KAUPER
Assistant Attorney General

ROBERT E. JOHNSON
United States Attorney
Fort Smith, Arkansas 72901

Attorneys for the United States of America

BETTY JO CHRISTIAN
Associate General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

FAITH R. KANE
General Counsel

ARTHUR J. CERRA
Deputy General Counsel

Attorneys for the Interstate Commerce Commission

PROOF OF SERVICE

I, Seymour Glanzer, one of the attorneys for defendant Interstate Commerce Commission, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the [illegible] day of November, 1973, I served copies of the foregoing Notice of Appeal on the several parties to this action as follows:

1. On the plaintiffs and intervening plaintiffs herein, by mailing copies in duly addressed envelopes to attorneys of record as follows:

With first-class postage prepaid to Drew L. Carraway, Esq., Rice, Carpenter and Carraway, 615 Perpetual Building, 111 E Street, N.W., Washington, D.C. 20004.

With first-class airmail, postage prepaid to Thomas Harper, Esq. and Don A. Smith, Esq., Harper, Young & Smith, P.O. Box 43, Fort Smith, Ark. 72901; Robert E. Joyner, Esq., Joyner, Goff & Sims, 2008 Clark Tower, 5100 Poplar Ave., Memphis, Tenn. 38138; Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Bldg., P.O. Box 22567, Jackson, Miss. 39205; Phillip Robinson, Esq., Robinson, Felts, Starnes & Nations, P.O. Box 2207, Austin, Texas 78767; Frank W. Taylor, Jr., Esq. and Kenworth E. Griffin, Esq., Reeder, Dysart, Sanders & Taylor, 911 Baltimore Ave., Kansas City, Mo. 64105; M. Ward Bailey, Esq., Christopher, Bailey & Taylor, 2412 Continental Life Bldg., Fort Worth, Texas 76102; William O. Turney, Esq., 2001 Massachusetts Ave., N.W., Washington, D.C. 20036.

2. On intervening defendants herein, by mailing copies in duly addressed envelopes, to their respective attorneys of record, as follows:

With first-class postage prepaid to Donald E. Cross, Esq., Cross and Knebel, 700 World Center Bldg., 918 Sixteenth St., N.W., Washington, D.C. 20006, attorney for intervening defendant

Johnson Motor Lines, Inc.; Charles S. Rhyne, Esq., and Courts Oulahan, Esq., Rhyne & Rhyne, 839 17th St., N.W., Suite 400, Washington, D.C. 20006, attorneys for intervening defendants Lorch-Westway Corporation, et al.

With first-class airmail postage prepaid to Maurice F. Bishop, Esq., Bishop, Carlton & Sweeney, 601-09 Frank Nelson Bldg., Birmingham, Ala. 35203, attorney for intervening defendant Bowman Transportation, Inc.; Esward A. Clark, Esq., Jerry C. Prestridge, Esq., Donald S. Thomas, Esq., Clark, Thomas, Denius, Winters and Shapiro, P.O. Box 1148, Austin, Texas 78767, attorneys for intervening defendant Red Ball Motor Freight, Inc.; Robert L. Jones, Jr., Esq., Jones, Gilbreath & Jones, 412 Merchants National Bank Bldg., Fort Smith, Ark. 72901, attorney for intervening defendants, Johnson Motor Lines, Inc., and Lorch-Westway Corporation, et al.

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

APPENDIX R

Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements filed with the Clerk of the United States Supreme Court on November 12, 1973.

RECEIVED
NOV 1 [illegible] 1973
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

OF THE UNITED STATES

RECEIVED
NOV 12 1973
OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION; BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; and LORCH-WESTWAY CORPORATION, ET AL.,	)
Appellants,	)
-v-	) APPLICATION NO. _____
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,	)
Appellees.	)

APPLICATION TO FIX TIME OR
FOR EXTENSION OF TIME TO
DOCKET CASE ON APPEAL AND TO
FILE JURISDICTIONAL STATEMENTS

Application is hereby made under Rules 13(1) and 34(2) of the Supreme Court of the United States by the Appellants, Bowman Transportation, Inc., Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc., and Lorch-Westway Corporation, et al. (Bowman, Johnson, Red Ball, and Lorch-Westway, respectively, and collectively, Appellants), to fix the time or for an extension of time to and including January 8, 1974, for the named Appellants to docket the case on appeal to this Court and to file jurisdictional statements.

The grounds in support of said request are as follows:

1. This case involves applications to the Interstate Commerce Commission (Commission) by the motor carrier Appellants (Bowman, Johnson, and Red Ball) under Title 49, Section 307 of the United States Code for extensions of their operating rights. The remaining Appellant, Lorch-Westway, is composed of a group of 41 intervening shippers who supported the need for additional motor carrier service. The applications were heard, considered,

and determined by the Commission on a consolidated record. The applications of Bowman, Johnson, and Red Ball were approved by the Commission by Order served January 24, 1972, in Herrin Transportation Co., Extension - Atlanta, Georgia, 114 M.C.C. 571. Petitions for reconsideration were denied by Order of the Commission served September 6, 1972, following which, and on October 4, 1972, some of the protestant carriers filed a complaint in the United States District Court for the Western District of Arkansas, Fort Smith Division, under Title 28, United States Code, Sections 1336, 1398, 2284, and 2321 through 2325, inclusive, of said Title, and Title 49, United States Code, Section 305(g) through Section 305(h), and 5 United States Code, Sections 701 through 706, styled:

> Arkansas-Best Freight System, Inc., et al., Plaintiffs, v. United States of America and Interstate Commerce Commission, Defendants, Red Ball Motor Freight, Inc.; Johnson Motor Lines, Inc.; Bowman Transportation, Inc. and Lorch-Westway Corp., et al., Intervening Defendants, Case No. FS-72-C-65.

2. On September 11, 1973, the District Court entered a final Order and Judgment and declared the Order of the Commission approving the applications for extension of operating rights void and permanently restrained and enjoined the Commission from issuing the certificates of public convenience and necessity to Bowman, Johnson, and Red Ball.

3. On September 17, 1973, the United States and the Commission filed a Motion in the District Court seeking an amendment to the Judgment to remand the cause to the Commission for further proceedings. This Motion was overruled and denied by the District Court by Order entered October 4, 1973.

4. All affected parties have appealed to this Court on the following dates indicated[1/] from the Orders of the District Court under Title 28,

---

1/ The appeal of Johnson was from the Order and Judgment of the District Court of September 11, 1973. All other Appellants filed notices of appeal from the Orders and Judgments of the District Court entered September 11, 1973, and October 4, 1973.

United States Code, Sections 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States:

Appellant		Date Appeal Filed
Johnson Motor Lines, Inc.		September 27, 1973
Bowman Transportation, Inc.	and	October 2, 1973 October 19, 1973
Red Ball Motor Freight, Inc.		October 10, 1973
Lorch-Westway Corporation, et al.		November 2, 1973
United States of America and Interstate Commerce Commission		November 9, 1973

5. To conserve time and costs and to provide for uniformity and clarity, the Appellants jointly propose to file a consolidated Appendix containing all pertinent orders of the Commission and the Court, all notices of appeal and other pertinent documents in connection with their jurisdictional statements. This could not be accomplished until all appeals were filed. An earlier or separate printing of the Appendix would be wasteful duplication.

6. Appellants by this application respectfully seek to fix a uniform date to correspond with the notice of appeal taken by the United States of America and Interstate Commerce Commission to be fixed or extended to and including January 8, 1974.

7. Approval of this request will not delay submission or consideration of the jurisdictional statements since no extension beyond the time allowed under existing rules to the United States of America and Interstate Commerce Commission, as an Appellant, is requested.

For the foregoing reasons, it is respectfully submitted that the request to fix the time to docket this case on appeal and for filing jurisdictional statements to and including January 8, 1974, should be granted.

Dated this 12th day of November, 1973.

Respectfully submitted,

BISHOP, CARLTON & SWEENEY
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Maurice F. Bishop, Attorney for Appellant,
Bowman Transportation, Inc.

JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767

Attorney for Appellant,
Red Ball Motor Freight, Inc.

DONALD E. CROSS
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

Attorney for Appellant,
Johnson Motor Lines, Inc.

COURTS OULAHAN
400 Hill Building, N.W.
Washington, D. C. 20006

Attorney for Appellants,
Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Thomas A. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

*Robert E. Joyner, Esq.
2009 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Dated at Washington, D. C., this 12th day of November, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public

My Commission Expires June 30, 1976

APPENDIX S

Request for Designation and Certification of the Record filed with the Clerk of the United States District Court on November 14, 1973.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al, Plaintiffs,	)	
-v-	)	CIVIL ACTION NO. FS-72-C-65
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,	)	
RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al, Intervening Defendants.	)	

U. S. District Court
Western Dist. Arkansas
FILED
NOV 14 1973
E. A. Riddle, Clerk
By
Deputy Clerk

REQUEST FOR DESIGNATION AND CERTIFICATION OF THE RECORD

Pursuant to Rule 12 of the Supreme Court of the United States, the undersigned appellants respectfully request the Clerk of the above Court to certify the entire record and to provide for its transmittal to the Clerk of the Supreme Court of the United States. It is respectfully requested that the certification and transmittal include (a) the entire record as certified to this Court by the Secretary of the Interstate Commerce Commission, which includes the entire record before said Commission, and (2) the entire record before this Court, including, but not limited to, all pleadings and orders, the opinions and judgments entered on September 11, 1973 and October 4, 1973 and all notices of appeal. Pursuant to Rule 12(2), it is requested that there be transmitted with the record a numbered list of the documents, identifying each with reasonable definiteness.

This 12th day of November, 1973.

BISHOP, CARLTON & SWEENEY
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Maurice F. Bishop, Attorney for Intervening Defendant, Bowman Transportation, Inc.

JERRY PRESTRIDGE
P. O. Box 1148
Austin, Texas 78767

Attorney for Intervening Defendant, Red Ball Motor Freight, Inc.

DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

Attorney for Intervening Defendant, Johnson Motor Lines, Inc.

COURTS OULAHAN
400 Hill Building, N.W.
Washington, D. C. 20006

Attorney for Intervening Defendants, Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Request for Designation and Certification of the Record upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 13
Fort Smith, Arkansas 72901

*Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Dated at Washington, D. C. this 27th day of November, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

My Commission Expires September 30, 1976

843

APPENDIX T

Order of Hon. Harry A. Blackmun, Associate Justice of the Supreme Court of the United States, entered November 13, 1973, fixing the time for docketing appeals to and including January 8, 1974.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 14, 1973

Maurice F. Bishop, Esquire
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

RE: Bowman Transportation, Inc., John Motor Lines, Inc., Red Ball Motor Freight, Inc., & Lorch-Westway Corp., v. Arkansas-Best Freight System, Inc., et al., A-475

Dear Mr. Bishop:

Your application, which included the applications of counsel for other above-mentioned appellants, for extensions of time in which to docket appeals in the above-entitled case was presented to Mr. Justice Blackmun who, on November 13, 1973, signed an order extending your time to and including January 8, 1974.

A copy of the Justice's order is enclosed. Kindly advise opposing counsel of this action.

A copy of this letter together with a certified copy of the Justice's order is being sent to counsel for each of the above-mentioned appellants.

Very truly yours,

MICHAEL RODAK, Jr., Clerk

By Arthur G. Christean
Arthur G. Christean
Deputy Clerk

Enclosure

lab

cc: Donald E. Cross, Esq. - Enc.
Jerry C. Prestridge, Esq. - Enc.
Courts Oulahan, Esq. - Enc.
Thomas A. Harper, Esq.
Honorable Robert H. Bork

Supreme Court of the United States

No. A-475

BOWMAN TRANSPORTATION, INC.,
JOHNSON MOTOR LINES, INC.,
RED BALL MOTOR FREIGHT, INC., and
LORCH-WESTWAY CORPORATION,

Appellants

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.

O R D E R

UPON CONSIDERATION of the application of counsel for appellants,

IT IS ORDERED that the time for docketing appeals in the above-entitled cause be, and the same is hereby, extended to and including January 8 -----, 1974.

/s/ Harry A. Blackmun
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of November, 1973.

846

A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court of the United States
BY Arthur G. Christian
Deputy

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Appendix to Jurisdictional Statements upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Thomas A. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

*Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Solicitor General
Department of Justice
Washington, D. C. 20530

Dated at Washington, D. C., this ____ day of

_____

Sworn to and subscribed before me,

the day and year aforesaid.

_____
Notary Public

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-475

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas, Fort Smith Division

JURISDICTIONAL STATEMENT

Of Bowman Transportation, Inc.

MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203
Attorney for Bowman Transportation, Inc.

Of Counsel
BISHOP, SWEENEY & COLVIN
601-09 Frank Nelson Building
Birmingham, Alabama 35203

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JURISDICTIONAL STATEMENT

Of Bowman Transportation, Inc.

OPINIONS BELOW

The Opinion of the Three-Judge District Court was filed September 11, 1973 (App.J, 739),[1] and is reported in 364 F.

[1] Since three motor carrier defendants, a group of 41 intervenor shippers, the Interstate Commerce Commission and United States have filed separate appeals from the judgments of the Three-Judge District Court, a separate Appendix has been printed containing all pertinent orders to avoid duplication. The appendix references in this Jurisdictional Statement will refer to the appendix numbers in the printed appendix, the first page of which is 93. Page numbers following the alphabetical appendix refer to the first page number of that appendix.

Supp. 1239. The Report of the Interstate Commerce Commission (ICC), served January 24, 1972, is printed at 114 M.C.C. 571-796 (App.B, 363). The Opinion of the Three-Judge District Court denying the Motion of the United States and ICC to amend the judgment to provide for remand to the Commission for further proceedings instead of permanently enjoining administrative consideration was entered on October 4, 1973 (App.N, 307), and is reported in 364 F. Supp. 1266. The importance of a complete record in this appeal arises, in part, from the mechanical adoption verbatim by the District Court of findings of fact and conclusions of law prepared by the plaintiffs below.[2] Timely appeals were taken and separate Jurisdictional Statements are being filed by each appellant.

JURISDICTION

This action was originally filed by competing motor carrier plaintiffs[3] to set aside an order of the ICC granting motor carrier operating authority to the three motor carrier appellants under 49 U.S.C.A. 307. The order and judgment of the Three-Judge District Court, entered on September 11, 1973,[4] improperly arrogated to itself a decision committed by statute to the ICC, by setting aside the Commission order of approval and enjoining any further proceedings by the Commission. On September 17, 1973, the United States and ICC filed a motion to amend the judgment to provide for remand to the Commission for further proceedings on the ground that the judgment entered was beyond the jurisdiction of the Court. The motion was denied by the District Court on October 4, 1973 (App.N, 807). Bowman Transportation, Inc. (Bowman) filed notice of appeal

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[2] Motor carrier competitors which unsuccessfully protested applications of the carrier appellants before the ICC.

[3] Under 28 U.S.C.A. 1336, 1398, 2284 and 2321-2325.

[4] App. J. 739.

from the original District Court order on October 2, 1973 (App. M, 803) and notice of appeal from the original and subsequent order on October 19, 1973.[5] Timely separate appeals were filed by each of the other appellants.

The jurisdiction of this Court to review the judgments of the District Court on direct appeal is conferred by 28 U.S.C.A. 1253 and 2101(b). **American Trucking Associations, Inc. v. Atchison, Topeka & Santa Fe Ry. Co.,** 387 U.S. 397, 18 L. Ed. 2d 847, 87 S.Ct. 1608, reh. den. 389 U.S. 889, 19 L.Ed.2d 197, 88 S. Ct. 11, 12; **American Trucking Associations, Inc. v. United States,** 364 U.S. 1, 4 L.Ed.2d 1527, 80 S.Ct. 1570; **United States v. Dixie Highway Express, Inc.,** 389 U.S. 409, 19 L.Ed.2d 639, 88 S. Ct. 539.

THE STATUTES INVOLVED

The statutes involved[6] are set out in the joint Appendix (A. 93). The principal statute involved is § 207(a) of the Motor Carrier Act, 49 U.S.C.A. 307(a).

THE QUESTIONS PRESENTED

The basic questions here involved are as follows:

1. Did the Three-Judge Court err by mechanically adopting verbatim an order prepared by the parties seeking judicial review of an administrative agency which reversed

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[5] Under 28 U.S.C.A. 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts and Supreme Court Rule 10.

[6] 49 U.S.C.A., preceding § 1 note, § 301 note, § 901 note and § 1001 note, §§ 17(4) and (5); 307(a) and (b); 5 U.S.C.A. 556, 557 and 706; 28 U.S.C.A. 2284(1) and (5).

the expert agency decision, refused to remand and enjoined any further agency consideration in the case, thereby substituting the judgment of the Court for the agency, which had Congressional responsibility therefor?

2. Can a Three-Judge District Court lawfully set aside and enjoin an order of the Interstate Commerce Commission granting an extension of a motor carrier certificate on the ground the Court does not agree with the order or may consider the evidence would warrant a different conclusion?

3. Is a carrier which withdrew from a motor carrier proceeding and which did not exhaust its administrative remedies entitled to intervene and raise an issue related to tacking of operating authority acquired by applicant during pendency of an extension proceeding, where the only justification for such intervention is the subsequent acquisition of new rights by the petitioning carrier?

4. Whether Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration. If so, when does such an administrative action reach that point?

5. Can such an issue be raised for the first time on review after the action has been administratively concluded and where multiple time extensions were requested and granted to the parties?

STATEMENT

I

The Three-Judge District Court Erred in Reversing the Expert Decision of an Administrative Agency, in Refusing to Remand the Case to That Agency and in Abdicating Its Judicial Function by Mechanically Adopting Verbatim Proposed Findings and Conclusions by One of the Parties Before the Court.

This proceeding before the ICC was commenced by 20 substantial motor carriers filing applications under 49 U.S.C.A. 307 seeking extensions of their operating rights. Each applicant represented and verified to the Commission that a public need existed for additional motor carrier operations principally between points in the Southeast and the Southwest. To develop an orderly procedure, the Commission consolidated 10 of the applications for hearing. The proceeding admittedly involved "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before the Commission".[7]

Following 147 days of oral testimony from 1,009 witnesses, who presented 1,989 exhibits, many of which were several hundred pages in length, consideration of the Recommended Report of the Examiners, and four separate sets of briefs[8] from the par-

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[7] **Herrin Transportation Company Extension, Atlanta, Georgia,** 114 M.C.C. 571, served January 24, 1972, which, as noted, is the subject Commission Order (App. B, 101).

[8] All the issues raised and involved in the administrative proceedings were briefed and re-briefed by the parties in (1) original briefs filed by substantially all the parties; (2) exceptions and supplemental exceptions to the Examiners' Report and replies thereto; (3) petitions for reconsideration of the Report and Order of the Commission and replies thereto; (4) petitions under Rule 102 and replies thereto.

ties, the Commission issued one of the most thorough and best documented orders in Commission history, containing 225 pages, including 120 chart pages carefully summarizing the transcript of 23,423 pages. After the Commission order, the plaintiffs selected the court[9] and filed their complaint seeking judicial review. The entire record was certified by the Secretary of the ICC to the Clerk of the District Court in boxes which were stored in the basement of the Federal Building at Fort Smith, Arkansas, in which condition, almost, if not all remained during ostensible judicial review.[10] The District Court arrogated to itself the right to decide dogmatically the issue of public convenience and necessity, i.e., whether additional motor carrier operating rights should be issued, which is the statutory duty and responsibility of the ICC.

At the time of submission, the Three-Judge District Court requested the parties to file a proposed order. All did so. The Court then completely abdicated its judicial responsibility and proceeded to mechanically copy verbatim the plaintiff's proposed findings and conclusions. In the joint Appendix we have numbered the paragraphs of the Court order of September 11, 1973 to correspond with the numbers in the plaintiff's proposed find-

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[9] Under 28 U.S.C.A. 1398, this action could be brought in the judicial district of the residence or principal office of any of the parties bringing the action. Of the 19 plaintiffs, only 2 claimed residence in the district where the suit was filed. Arkansas-Best Freight System, Inc. (ABF) and Mercury Motors, Inc. (Mercury). ABF filed a protest to the Bowman application, but withdrew. Mercury operated over regular routes between Memphis and Fort Smith by way of Little Rock. It protested the Bowman application, but the application was amended to exclude Fort Smith.

[10] See Affidavit of Robert L. Jones, Esq., Fort Smith, Arkansas, attached as Appeidix A. We also invite official inspection of the record transmitted to the Clerk of the Supreme Court by the Clerk of the District Court in substantially the same condition and some in unopened containers used by the Secretary of the ICC in transmitting the record to the Clerk of the District Court.

ings and conclusions.[11] This is not the judicial review contemplated and required, particularly when reviewing "the most extensive record ever developed" in such a proceeding. This raises a novel issue of judicial administration, i.e., the verbatim adoption by a Three-Judge District Court of proposed findings and conclusions by one party, now squarely presented for the first time for decision by the Supreme Court. In the determination of this issue, the Court may well be guided by the following authorities and well established principles:

(a) **In the context of a three-judge district court review of an administrative order, all three judges must fully perform the judicial function.**

In **Ayershire Collieries Corp. v. United States** (1947), 331 U.S. 132, 138, 91 L.Ed. 1391, 73 S.Ct. 1168, the Supreme Court held that a district court's judgment was void where only two of the three judges participated in determination of the case due to illness of the third. Here, the judicial function was exercised only through copying verbatim an order prepared by the plaintiffs.

(b) **"Fairness and minimum requirements of due process require that findings and conclusions be those of the court and not of counsel and that 'it must be the independent and solitary decision of the judge.'"**

This is the language of the then Circuit Judge (now Justice) Blackmun in **Bradley v. Maryland Casualty Co.** (8th C.A. 1967), 382 F. 2d 415, 422, where, in conclusion, the Court fixed the guideline (here violated) as follows:

"We venture to suggest that if, because of prevailing custom, or pressure of work, or a case's technical nature, or

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[11] The Court admitted the plaintiff's proposed order was "adopted by the Court as hereinafter set forth".

> for other reasons, counsel must be asked to assist in the preparation of findings and conclusions, it is better practice to make this request at or soon after the submission of the case and prior to decision and to make it of both sides. 5 Moore's Federal Practice (2d Ed. 1966), Par. 52.06(3), p. 2665. Then the court may pick and choose and temper and select those portions which better fit its own concept of the case."

Here, there admittedly was no "picking, choosing, tempering or selection." Instead, the arbitrary mechanical acceptance of the order prepared by plaintiff advocates led the Court to the errors herein specifically noted.

(c) **For purposes of review "maximum doubt" is cast upon findings of fact and conclusions of law mechanically and erroneously adopted by the court below.**

In **Roberts v. Ross** (3rd C.A. 1965), 344 F.2d 747, the Court held and declared:

> "But counsel who is called upon to articulate and write out the findings and conclusions must do so without any knowledge of the fact findings and reasoning processes through which the judge has actually gone in reaching his decision.
>
> We strongly disapprove this practice. For it not only imposes a well-nigh impossible task upon counsel but also flies in the face of the spirit and purpose, if not the letter, of rule 52(a).
>
> Findings and conclusions prepared ex post facto by counsel, even though signed by the judge, do not serve adequately the function contemplated by the rule."

See also **In Re Las Colinas, Inc.** (1st C.A. 1970), 426 F. 2d 1005; **Louis Dreyfus & Cie v. Panama Canal Co.** (5th C.A. 1962), 298 F. 2d 733.

(d) **The functions of an ardent advocate and an impartial judge are essentially inconsistent. Findings "mechanically adopted" are not "the product of a disinterested judicial mind" essential to an evaluation of the court's reasoning.**

In **United States v. El Paso Natural Gas Co.**, 376 U.S. 651, 656, 12 L.Ed.2d 12, 84 S. Ct. 1004, the Supreme Court emphasized that findings and conclusions "drawn with the insight of a disinterested mind are more helpful" than those "mechanically adopted" which do not reveal the discerning line for decision of the basic issues in the case.[12]

Findings and conclusions prepared by counsel, even though signed by the Court, do not adequately serve the function contemplated and required by Federal Rule 52(a), particularly where the order prepared and proposed by one of the parties is simply copied verbatim. The purpose of Rule 52 is to require the Court to formulate and articulate its findings of fact and conclusions of law in the course of its determination of the case

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[12] In **United States v. El Paso Natural Gas Co.** at 376 U.S. 656, fn. 4, the Supreme Court quoted Judge J. Skelly Wright of the Court of Appeals of the District of Columbia as follows: "Who shall prepare the findings? Rule 52 says the court shall prepare the findings. 'The court shall find the facts specially and state separately its conclusions of law'. We all know what has happened. Many courts simply decide the case in favor of the plaintiff or the defendant, have him prepare the findings of fact and conclusions of law and sign them. This has been denounced by every court of appeals save one. This is an abandonment of the duty and the trust that has been placed in the judge by these rules. It is a noncompliance with Rule 52 specifically and it betrays the primary purpose of Rule 52—the primary purpose being that the preparation of these findings by the judge shall assist in the adjudication of the lawsuit." **Seminars for Newly Appointed United States District Judges** (1963), p. 166. See also **United States v. Howard** (3rd C.A. 1966), 306 F.2d 373; **Industrial Building Materials, Inc. v. Interchemical Corp.** (9th Cir. 1970), 437 F.2d 1336; **Louis Dreyfus & Cie v. Panama Canal Co.** (5th C.A. 1962), 298 F.2d 733; **Chicopee Mfg. Corp. v. Kendall Co.** (4th C.A. 1961), 228 F.2d 719; **United States v. Forness** (2d C.A. 1942), 125 F.2d 928.

and its decision making process. Here, the Court did not review the record. Frankly, in view of its magnitude, it would be asking too much of any court. This is one of the reasons supporting the rule of limited judicial review and the requirement to remand the proceedings if, and when, error is found, both of which requirements were here violated. But where issues were in sharp conflict, it is not asking too much to request the Court to review and consider the record or the Commission orders as to those aspects before arbitrarily and blindly adopting the factual argument of one of the parties. The subject order demonstrates a completely unbalanced consideration of the evidence which is the understandable result of mechanically adopting findings and conclusions which are the product of zealous counsel whose duty, as advocates, was to present all their contentions in the light most favorable to their clients.

II

The Three-Judge Court Exceeded Its Limited Review Functions Contrary to Well Established Supreme Court Precedent by Adopting the Plaintiffs' Proposed Order Which

(a) Weighed the evidence before the Commission

In the Court below, the plaintiffs argued that the Commission erred in according more weight to the transit time studies of more than 200 shipper witnesses than it did to the transit time studies of 14 interested motor carrier protestants (37).[13] The Court's (plaintiffs') order quoted at length from the Examiners' Report with respect to transit time and omitted entirely the findings of the Commission on this issue. Adopting the plaintiffs' order, the Court below held that (30):

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[13] Figures in parentheses refer to paragraph numbers of the plaintiffs' proposed order and the order of the Three-Judge Court entered September 11, 1973 (App. I, 697 and J, 739).

> "These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants and that protestants' service was, on the whole, reasonably expeditious."[14]

That representative statement is factually incorrect, legally impermissible and directly contrary to the factual finding of the Commission. It is simply the plaintiffs' argument "mechanically adopted". What the Commission actually found and stated with respect to the transit time studies is set out in Appendix B attached (114 M.C.C. 596, 599, 600). The Court (plaintiffs') order does not discuss these specific findings of the Commission which were ineluctably supported by the record evidence. Additionally, the Court (plaintiffs') order omits entirely any consideration of the specific Commission finding that (114 M.C.C. 596):

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive."

and that (114 M.C.C. 597):

> "Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is

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[14] This is in direct conflict with the admission in the Court's (plaintiffs') order (19) that "most shippers generally expressed dissatisfaction with inconsistent and excessive transit times". The Court (plaintiffs) do not attempt any explanation of this dichotomy.

> a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing."

Further (114 M.C.C. 597):

> "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service."

and that (114 M.C.C. 597):

> "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States."

The weight accorded to the various transit time studies and the reasons therefor were clearly stated by the Commission. All the documents are summarized in the Commission order, particularly Appendix E thereto.

650, or approximately 80% of the 824[15] shipper witnesses who testified in this proceeding had specific complaints of inadequate and inconsistent transit time and expressed a dire need for reliable and consistent service between the Bowman authorized and proposed points.

The supporting shippers and receivers testified that as a result of inconsistent and excessive transit times experienced on a recurring basis, their business has been materially hampered by an inability to

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[15] This represents the 933 witnesses who testified less the 109 which supported the application of Roadway, which was denied.

—reduce inventories where their storage space and investment capial were limited.

—maintain production schedules where they are dependent upon consistent service.

—give timely delivery or serve customers on special orders, for example, on special and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timely deliveries are not effected.

—take short term discounts.

—obtain job site delivery to metropolitan areas where construction crews and production lines frequently are awaiting arrival of goods and supplies.

—carry in stock the multiple sizes, colors and grades of such items as carpets, textiles, tile and paint, thereby making it necessary to order from brochures or samples and to depend upon expeditious, consistent motor carrier service.

—order from preferred markets.

Additionally:

—the fact that quicker and more dependable service is available between the west coast and Texas points, militates against the southern market.

—installations cannot be made in the time and manner required.

—companies have been unable to advise customers as to delivery of special orders of merchandise not in stock.

—many companies have been required to pay higher or premium prices in order to insure a reasonable delivery time from now preferred markets.

The District Court judicially held that in the study and application of such transit time exhibits, the Commission, as a matter of law, must give greater weight to the records of protestant motor carriers, a position which the Commission previously had rejected in **Strickland Transportation Company,** 77 M.C.C. 655, 663, stating:

> "We cannot accept the general proposition that a carrier's records are accurate and that a shipper's records are not, or that the carrier's records are more likely to be accurate than the shipper's."

It is well settled that reviewing courts should not weigh the evidence. As was recognized in **Arrowhead Freight Lines v. United States,** 115 F.Supp. 537, 544 (S.D. Cal. 1953):

> "**To consider the weight of the evidence before the Commission,** the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made in other cases, **is beyond our province.** Virginia R. Co. v. United States, 1926, 272 U.S. 658, 663, 47 S.Ct. 222, 224, 71 L.Ed. 463; see also Universal Camera Corp. v. N.L.R.B., 1951, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 1946, 327 U.S. 515, 535-536, 66 S.Ct. 687, 90 L.Ed. 821; Rochester Tel. Corp. v. United States, 1939, 307 U.S. 125, 139-140, 59 S.Ct. 754, 83 L.Ed. 1147; I.C.C. v. Union Pac. R.R. Co., 1912, 222 U.S. 541-547-548, 32 S.Ct. 108, 56 L.Ed. 308." (Emphasis supplied.)

The Court's (plaintiffs') suggestion that Bowman transit time studies were considered to support the feasibility of its proposal and rejected to support the challenge is incorrect. The Commission carefully summarized the exact results of the studies (114 M.C.C. 586) and considered them with other factors, including highway conditions, and applied to all this evidence

the weight it concluded appropriate. The weight to be accorded the evidence is for the Commission and not for the courts, absent arbitrary action. **Patterson v. United States and Interstate Commerce Commission,** 178 F.Supp. 771 (1959); **Riss & Co. v. United States,** 100 F.Supp. 468, 484; **Carolina Freight Carriers v. United States,** 297 F.Supp. 848; **Universal Camera Corp. v. N.L.R.B.,** 340 U.S. 474, 488, 95 L.Ed. 456, 71 S.Ct. 222; **Mississippi Valley Barge Line Co. v. United States,** 292 U.S. 282, 286, 78 L.Ed. 1260, 54 S.Ct. 692.

The Court's (plaintiffs') order goes to the extreme of holding that the plaintiffs who selected the time periods and prepared and presented their transit time studies were deprived of "an opportunity to defend their propriety or correct the alleged deficiencies" (41). Any review of the record would have exposed that error. The hearings continued for 147 days. None of the plaintiffs sought "to correct" the deficiencies and instead of remanding the case, the Court enjoined the Commission from further proceedings, thus giving full effect to the plaintiffs' argument and substituting its judgment for that of the Commission upon whom the statutory responsibility is supposed to rest.

The Court (plaintiffs) contends that if "standards" relating to a consideration of transit time studies are to be changed "the parties were entitled to reasonable notice and an opportunity to confirm to such changes" (40). What opportunity is afforded under the subject Court order which arbitrarily terminated the most extensive motor carrier record ever developed? How can the action of the Three-Judge Court, below, in weighing the evidence, ignoring the Commission's findings, adopting verbatim the arguments of plaintiffs and giving complete effect to the rejected findings of the Examiners be reconciled with the rule established for review of Commission orders succinctly stated by Justice Brandeis in **Virginia R. Co. v. United States,** 272 U.S. 658, 71 L.Ed. 463, 468, 47 S.Ct. 222, that:

> "This court has no concern with the correctness of the Commission's reasoning, with the soundness of its decision, or with the alleged inconsistency with findings made in other proceedings before it."

Accord: See **Interstate Commerce Commission v. Union P. Ry. Co.**, 222 U.S. 541, 56 L.Ed. 308, 32 S.Ct. 108.

(b) **Adopted the errors of the Examiners (1) in considering all the applications collectively and (2) in relation to the commodities shipped to the exclusion of the territories involved.**

Of the 31 pages and 56 paragraphs contained in the Court's (plaintiffs') findings of fact, 18 pages and 33 paragraphs deal exclusively with a preliminary statement and the rejected Examiners' Report. The Examiners considered all applications collectively and classified the freight into 45 categories. The District Court erroneously stated that this "method used by the Examiner was consistent with the method used by the applicants and protestants in their respective abstracts of the evidence presented to the Examiners" (20). That statement is incorrect and had the Court reviewed the record and exceptions, it would have found, as did the Commission (114 M.C.C. 574) that:

> "Collectively, applicants except to the basic approach taken by the examiners in assertedly considering those applications on the erroneous concept that either all must be granted or all must be denied. It is averred that the examiners should have evaluated, and made findings and conclusions relating to, each application as a separate and independent matter, and that the supporting testimony should not be treated only in relation to the commodities shipped to the substantial exclusion of the territories and points involved."

Bowman and other applicants strongly excepted to the Examiners' approach, pointing out there was no question that gen-

eral commodity traffic was involved and that specific findings were required as to each applicant. The Court (plaintiffs) adopted the error of the Examiners, considered the case on a *de novo* basis and, contrary to prior judicial admonition, substituted its judgment for that of the Commission. This was error. **Patterson v. United States and Interstate Commerce Commission**, 178 F.Supp. 771 (1959); **Willis Shaw Frozen Express, Inc. v. United States,** 256 F.Supp. 257 (1966).

(c) **The Court (plaintiffs) adopted the plaintiffs' claim that approval would expose plaintiffs' traffic to potential diversion and ignored the Commission's conclusion that "the gains to be derived by the shipping public in general far outweigh any adverse effect . . . any . . . protestant may experience." (144 M.C.C. 611.)**

The Court (plaintiffs) discussed in detail the evidence presented by protestant motor carriers (plaintiffs) of a potential diversion of traffic and adopted in full the plaintiffs' claims, but failed to refer to the Commission consideration of this testimony together with that of the 824 shipper witnesses who related specific complaints of inadequate and inconsistent service and expressed a dire need for the service proposed. That testimony is completely ignored in the Court's (plaintiffs') order. Throughout the Court (plaintiffs) discuss what the Examiners found without reference to the Commission discussion of those facts and the ultimate conclusions found by the Commission. We simply ask this Court to read the District Court Order and the Order of the Commission (114 M.C.C. 571) and then make a determination whether a fair consideration was accorded and whether justice prevailed in this proceeding below.

The Court (plaintiffs) argued that (45):

"The decision omitted entirely the examiners summary of all evidence presented by six carriers that had protested

> only the application of one of the carriers that had failed to file exceptions."

The facts are, the Commission specifically stated (114 M.C.C. 598):

> "The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary."

The Examiners recommended the application of Roadway Express, Inc. be denied. It filed no exceptions and the recommended denial became final under Commission Rule 97. The 6 carriers omitted protested only the Roadway application. Rule 247(d)(2) of the Commission rules provides that failure to timely protest is a waiver of opposition and participation in the proceedings.

The Court (plaintiffs) erroneously stated that the Commission refused to "evaluate the effect of this expanded service" arising from extensions or expansions of operating authority "subsequent to the close of the hearing" (46). This is incorrect. To the contrary, the Commission specifically stated (114 M.C.C. 576):

> "As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. West Brothers, Inc., Extension—Baton Rouge, La., 108 M.C.C. 485, 489 (1969); and Ayers Extension—Cheyenne, Wyo., 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties to this proceed-

ing, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations."

Additionally, the Examiners or the Commission, or both, made specific reference to 23 separate orders approving the extension or merger of operating rights, a list of which is attached as Appendix C. These facts would have been apparent to the Court from a study of the Commission order.

The Court (plaintiffs) stated (48) that approval would result in a deterioration of service, primarily to small communities proposed to be traversed. If the Court had simply examined the Commission order (114 M.C.C. 777), it would have found that the claim was made by Campbell-66, one of the plaintiff protestants, and it would further have noted what the Commission found and what the District Court omitted, that (114 M.C.C. 777:

"Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Misissippi, which are not proposed to be served directly by these applicants. **However, in this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender it freight for certain Mississippi points it is authorized to serve."** (Emphasis supplied.)

Nowhere is it suggested that the Commission order was not supported by substantial evidence. In fact, 933 public witnesses admittedly testified to a public need for the proposed service which they declared was essential to the proper operations of their businesses. The order of the District Court is in irreconcilable conflict with its conclusion that:

"Generally an order of such an agency will be sustained if it is within the agency's statutory powers and is based

on appropriate findings which in turn are supported by substantial evidence."

After 147 days dedicated to oral hearings and to compiling a record never equalled in Commission motor carrier history, we are confronted with an arbitarary judicial review of the record and the Commission order based thereon without the respect of an examination of that record by the Court.

III

The Court (Plaintiffs) Concluded That the Petition for Intervention and Reconsideration Filed by ABF as to the Bowman Application Should Have Been Granted for Consideration of the Issue Relating to Tacking Bowman Subsequently Acquired Authority With That Here Involved, But Instead of Remanding for a Determination of That Issue the District Court Enjoined Further Proceedings or Consideration.

During Commission pendency of the subject action, Bowman purchased from Alabama Highway Express, Inc. (AHE) rights authorizing operations between Birmingham and points within a 65 mile radius thereof, on the one hand, and, on the other, Louisville, Kentucky, points in Tennessee, Indiana and described parts of Florida, Ohio and Illinois. Commission approval of the purchase application in Docket MC-F-9921 enabled Bowman to tack the acquired rights to provide through service. Prior to consummation of the purchase, Bowman had interlined traffic with AHE at common points.[16] None of the plaintiffs protested this acquisition.

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[16] "Tacking" is the joining of separate grants of authority belonging to the same carrier by routing shipments through a point common to the separate authorities so as to provide a through carrier service between the territory served under the authority and that served under another and separate authority. **Chemical Leaman**

Throughout the subject proceeding, Bowman indicated its intention to render service between Montgomery and points on its proposed routes.[17] This case was tried throughout on that basis.

Following publication of notice in the Federal Register (FR), ABF filed a petition to intervene and for rehearing. It is the only plaintiff that did so. The complaint of ABF involved the acquisition by Bowman of a part of the operating authority of AHE during pendency of the subject application and the acquisition by ABF of a part of the operating authority of Youngblood Truck Lines in Commission Docket MC-F-11179 which was not approved until October 15, 1971. Montgomery was not related to the AHE purchase and ABF cannot serve direct any point in Alabama. ABF argued that the authority which Bowman acquired from AHE should be restricted in this proceeding. The Commission denied the petition of ABF to intervene in the proceeding in which it was formerly a party and withdrew. The order of the Commission was right and the order of the District Court is wrong because:

(1) ABF withdrew its protest to the subject Bowman application.

(2) ABF did not protest the Bowman acquisition of AHE.

(3) To insert a restriction affecting the rights Bowman acquired from AHE would constitute an unlawful revoca-

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Tank Lines, Inc. v. United States, 208 F.Supp. 1269 (D.Del. 1969); **Braswell Motor Freight, Inc. v. United States,** 336 F.Supp. 709, 711 n. 1 (C.D.Cal. 1971).

"Interlining" is a practice whereby two carriers provide a through service over their respective authorized routes by transferring shipments from one carrier to another at a common service point. **Strickland Transportation Co., Inc.—Purchase—England Transportation Co.,** 104 M.C.C. 297, 316 (1967).

[17] Montgomery was not involved in the AHE purchase.

tion of rights which could be considered only under Section 212 of the Act.

(4) ABF is not authorized to serve any cities in Alabama.

(5) ABF failed to exhaust its administrative remedies. If it had any argument with the Division order of September 1, 1972 denying its petition to intervene, it should have filed a petition for rehearing to that aspect of the order under Commission Rule 101. See **Chicago, St. P. M. & O. R. Co. v. United States,** 322 U.S. 1, 88 L.Ed. 1093, 64 S. Ct. 842.

In any event, if there was any question about the right of ABF to intervene in this proceeding, from which it had withdrawn, where it did not exhaust its administrative remedies, and if it had any standing to raise the issue of restricting the rights acquired by Bowman from AHE against tacking with the rights here involved, the proper procedure would be a remand to the Commission by the Court to consider this late raised issued and not an order enjoining the Commission from any further proceedings with respect to the entire grant.

IV

When a Substantial Administrative Proceeding Is Concluded Within the Rules and Time Limitations of the Agency, Further Agency Action Cannot Be Judicially Enjoined on the Basis the Record Is So Stale "as a Matter of Law" That It Will Not Support an Agency Order.

After the surprising order of September 19, 1973 annulling the Commission order and enjoining further proceedings in this cause, the United States and the ICC filed a motion requesting the Court to amend its judgment to remand the case to the Commission. The motion was denied. The District

Court held that "as a matter of law" the record "dealing with 5 and 6 year old facts—could not lawfully support a finding of public need or additional motor carrier service in 1973 or 1974" (App. N, 807). This raises critical issues of original importance affecting **all** administrative proceedings

—Whether a Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and Commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration.

—If so, when does such an administrative action reach that point?

—Can such an issue be raised for the first time on review after the action has been administratively concluded and where multiple time extensions were requested and granted to the plaintiffs? **Gearhart & Otis v. S.E.C.** (D.C. C.A. 1965), 348 F.2d 798, holds you cannot. See also **United States v. L. A. Tucker Truck Lines, Inc.,** 344 U.S. 33, 37, 97 L.Ed. 54, 73 S.Ct. 67.

Hearings in this proceeding commenced on March 21, 1966 and continued, with little respite, through August 24, 1967. The 225 page Commission order was served on January 24, 1972. No steps were taken and no suggestions were made by any party during the administrative proceedings seeking acceleration of agency action. During the interim, a substantial number of plaintiffs were busily engaged prosecuting applications and obtaining operating rights under representations (contrary to those here made) that additional motor carrier service was needed.[18]

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[18] See Appendix C this statement.

In **Associated Press v. F.C.C.** (D.C. C.A. 1971), 448 F.2d 1095, 1106, the Court stated:

> "We cannot see that the Commission abused its discretion by adopting the procedures and the timing which in its sound judgment it considered necessary to assure an adequate record in a case involving many complex and difficult problems. In any event, if the petitioner were aggrieved by delay in the Commission's proceedings their remedy was an application to a court for an order requiring expedition; it was not rejection of the proposed rates. See Deering Milliken, Inc. v. Johnston, 295 F.2d 856 (4th Cir. 1961); N.L.R.B. v. J. H. Rutter-Rex Mfg. Co, 305 F.2d 242 (5th Cir. 1962); M. G. Davis & Co. v. Cohen, 256 F.Supp. 128, 133, n. 7 (S.D. N.Y.), aff'd 369 F.2d 360 (2d Cir. 1966)."

In **Texaco, Inc. v. F.T.C.** (D.C. Cir. 1964), 336 F.2d 754, rev'd 381 U.S. 739, 14 L.Ed.2d 714, 85 S.Ct. 1798, the District Circuit Court of Appeals set aside an F.T.C. cease and desist order on the grounds that the order was not supported by substantial evidence and that one member of the F.T.C. was disqualified from participating in the case. The Court concluded that the normal procedure of remand was inappropriate because of inordinate delays throughout the litigation, including 4 years of investigation and 8 years of litigation, and ordered the complaint dismissed. This order was vacated by the Supreme Court and the case was remanded to the F.T.C. for further action.

In **F.T.C. v. J. Weingarten, Inc.** (5th Cir. 1964), 336 F.2d 687, 691-2, Weingarten contended that an F.T.C. order remand for additional hearings after nearly 3½ years of formal proceedings violated Section 6(a) of the Administrative Procedure Act (APA). The District Court held that the remand was a violation of the APA and ordered the F.T.C. to make a

final disposition of the matter within 30 days. The Fifth Circuit reversed, stating:

> "(W)e think it would be the extremely rare case where a court would be justified in holding that the passage of time and nothing more presents an occasion for peremptory intervention of an outside court in the conduct of an agency's adjudicative proceedings."

The proper remedy for any delay is a court order to expedite the proceedings not one terminating it altogether. This is particularly true where the record is perhaps the largest in the history of motor carrier regulation, involving 933 witnesses and a tremendous administrative and private investment in time and funds to develop a true record of transportation needs, and no party, at any time, sought to accelerate agency action.

V

If Legal Error Is Found in the Commission's Order, Judicial Inquiry Is at an End and the Case Should Be Remanded to the Commission.

The District Court erred in setting aside and enjoining the order of the ICC granting extensions of motor carrier certificates under 49 U.S.C.A. 307(a) on the ground the Court did not agree with the order and considered the evidence would warrant a different conclusion. The District Court exceeded its reviewing authority by rendering the case and enjoining any further Commission consideration or action in the proceeding. It is our position that a district court has authority to set aside an order of the Commission, after proper judicial review, but it cannot substitute its judgment for that of the Commission on the factual issue of public convenience and necessity. **Interstate Commerce Commission v. Union Pac. R. Co.,** 222 U.S. 541, 547, 56 L.Ed. 308, 32 S.Ct. 108; **Mississippi Valley Barge Line**

Co. v. United States, 292 U.S. 282, 286, 78 L.Ed. 1260, 54 S.Ct. 692; **Rochester Tel. Co. v. United States,** 307 U.S. 125, 139, 83 L.Ed. 1147, 59 S.Ct. 754; **Universal Camera Corp. v. N.L.R.B.,** 340 U.S. 474, 488, 95 L.Ed. 456, 71 S.Ct. 456; **United States v. Pierce Auto Frt. Lines,** 327 U.S. 515-536, 90 L.Ed. 821, 66 S.Ct. 687, 698.

In **Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co.,** 379 U.S. 642, 13 L.Ed.2d 550, 85 S.Ct. 610, the three-Judge Court (229 F.Supp. 572) set aside and, as here, permanently enjoined the execution and operation of an order of the ICC cancelling certain rate reductions which had been put into effect by the appellee railroad. Contrary to the lower court's statement in this case (App. C, 363), the Court, in **Arrow,** specifically stated the reason for its order was that the new lower rates violated specified sections of the Interstate Commerce Act. The Supreme Court vacated the order of the District Court and directed it to remand the case to the ICC for reconsideration.

In **F.P.C. v. Idaho Power Comm.,** 344 U.S. 17, 97 L.Ed. 15, 73 S.Ct. 85, the District of Columbia Court of Appeals entered an order directing the F.P.C. to modify a license granted by it for a hydroelectric project to allow the government to transmit electricity over the lines of the licensee. The Supreme Court reversed, stating:

> "It is the Commission's judgment on which Congress has placed its reliance for control of licenses. . . . When the court decided that the license should issue without the conditions, it usurped an administrative function. There doubtless may be situations where the provision excised from the administrative order is separable from the remaining parts or so minor as to make remand inappropriate. But, the guiding principle, violated here, is that the function of the reviewing court ends where an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration. (citing cases)."

Accord see: F.T.C. v. Morton Salt Co., 334 U.S. 37, 91 L. Ed. 420, 68 S. Ct. 22.

In **United States v. Saskatchewan Minerals,** 385 U.S. 94, 17 L.Ed.2d 192, 87 S. Ct. 254, the Supreme Court reversed an order of the District Court which remanded the case to the ICC because the District Court order was unduly restrictive and, in fact (as here), precluded the Commission from considering the entire case. The Supreme Court stated that the District Court went too far and that "under the circumstances here, this restriction is an improper limitation on the Commission's duty to reconsider the entire case." There, the Supreme Court held that the remand erroneously attempted to **restrict** the Commission's consideration of the case. Here, the subject order **prohibits** consideration.

The District Court's suggestion that **Interstate Commerce Commission v. Parker,** 326 U.S. 60, 89 L.Ed. 2051, 65 S. Ct. 1490, "has nothing to do with the issue now before this court" is inaccurate. There, as here, the ICC had issued a certificate. There, as here, the District Court enjoined the order. There, the Supreme Court reversed, stating that:

> "The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor carrier service would serve public convenience and needs."[19]

The District Court's excuse for not remanding this case was that (1) "the record in this case is voluminous" and (2) "the record relates to the applications of 10 carriers." Rather than justifying the adamant refusal to remand, these facts should compel such action because it would avoid the necessity of retaking considerable testimony, would permit an updating of the record, if required, and would enable the Commission to consider the proceeding on the basis of an extended background. The Dis-

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[19] It is impossible to reconcile the District Court order with this definitive rule.

trict Court's suggestion that remand would "impede rather than facilitate Commission consideration" reflects a complete incomprehension or indifference to the time and expense of further hearings, involving 933 witnesses, lasting many months, costing many thousands of dollars and repeating the same type testimony already in this record.

In short, the effect of the District Court order will create grave doubt on the consolidation of further applications, thereby resulting in a wasteful expenditure of time and money for all parties. The District Court order will encourage and reward delay. It would enable an organized group of protestants to defeat any application by original briefs to the administrative law judge, exceptions or replies to the recommended order, petitions for reconsideration and petitions under Commission Rule 102.

The District Court order illustrates the hazard of forbidden judicial intrusion into the administrative domain. It should not be allowed to stand. The mandate of the National Transportation Policy (App. A 93) is directed to the Commission and not to the courts. **Schaffer Transportation Co. v. United States,** 355 U.S. 83, 87, 88, 2 L.Ed.2d 117, 78 S. Ct. 173; **Arrow Transportation Co. v. United States,** 176 F.Supp. 411, 416.

CONCLUSION

Probable jurisdiction should be noted and the judgment below reversed.

Respectfully submitted

MAURICE F. BISHOP
Attorney for Bowman
Transportation, Inc.

Of Counsel

BISHOP, SWEENEY & COLVIN
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Certificate of Service

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Jurisdictional Statement upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

*Donald E. Cross, Esq.
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D. C. 20006

*Courts Oulahan, Esq.
Charles S. Rhyne
400 Hill Building
Washington, D. C. 20006

*Jerry C. Prestridge
Sander W. Shapiro
Post Office Box 1148
Austin, Texas 78767

*Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39105

*William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

*Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

*Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

*Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

*Thomas Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

*Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

*M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

*Philip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

*Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

*Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

*Solicitor General
Department of Justice
Washington, D. C. 20530

Dated at St. Louis, Missouri this 4th day of January, 1974.

Sworn to and subscribed before me the day and year aforesaid.

My Commission Expires Dec. 14, 1976

(SEAL)

ADDENDUM

APPENDIX A

Affidavit of Robert L. Jones, Jr.

State of Arkansas)
County of Sebastian) ss.

My name is Robert L. Jones, Jr. I am fifty-one (51) years of age. I have actively engaged in the private practice of law in the City of Fort Smith, Arkansas, continuously since September of 1948 (with the exception of 21 months in 1950-52 when I served on active duty in the Judge Advocate General Corps of the United States Army). I am admitted to practice before the Arkansas Supreme Court, the United States District Court for the Western District of Arkansas, the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States. I am local counsel in Fort Smith, Arkansas, for Johnson Motor Lines, Inc., Bowman Transportation, Inc., and Lorch-Westway Corporation, et al, intervening shippers in the case in the United States District Court for the Western District of Arkansas, Fort Smith Division, styled "Arkansas-Best Freight System, Inc., et al, v. United States of America and Interstate Commerce Commission, et al, No. FS-72-C-65".

On November 12, 1973, at the request of co-counsel for the named clients, I went to the office of the Clerk of the United States District Court, Western District of Arkansas, Fort Smith Division, for the purpose of conferring with the Clerk concerning matters related to the preparation and transmittal of the record to the Supreme Court of the United States in connection with the appeal from the judgment of this Court entered September 11, 1973, and the order of this Court entered October 4, 1973. The Clerk, Honorable E. A. Riddle, specifically requested instructions with reference to transmittal of the record of the proceedings before the Interstate Commerce Commission, which he stated was stored in boxes in the base-

ment of the Federal Building (the Clerk's office is on the third and top floor of the building). I accompanied Mr. Riddle to the basement to a store room which was locked and we gained entrance by a key in the possession of Mr. Riddle. Mr. Riddle pointed out to me four (4) boxes, size approximately two and a half feet in height by two and a half feet in width and two feet in depth, which had been stamped filed on May 23, 1973 on the outside of the boxes by Mr. Riddle's office. Mr. Riddle informed me that the boxes containing the record of the proceedings before the Interstate Commerce Commission, upon receipt by his office, were stored in this store room and to his knowledge had been in the store room continuously since receipt. A more detailed inspection of the boxes revealed that three out of the four large boxes had been opened and each large box contained two or more smaller boxes. These smaller boxes did not appear to have been opened. I instructed Mr. Riddle to have the four larger boxes with content undisturbed crated into one large container and shipped to the Clerk of the Supreme Court of the United States.

Further affiant sayeth not.

/s/ ROBERT L. JONES, JR.

Subscribed and sworn to before me, this 16th day of November, 1973.

MARY E. BURROWS
Notary Public

(Seal)

My Commission Expires: April 26, 1977.

APPENDIX B

At 114 M.C.C. 596, the Commission stated:

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive. The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1 to 7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown to have received between 3- and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits, taken collectively are representative of the service these shippers are and have been receiving."

At 114 M.C.C. 599, the Commission stated:

> "The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the

period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (From Kansas City, Mo. to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration."

At 114 M.C.C. 600, the Commission stated:

"Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole,

(10) MC-F-9921, Bowman-Purchase (Portion) Alabama Highway Express (August 1968) (ERO appendix A, p. 25) (O, p. 585)

(11) MC-94201, Sub 86, Bowman Trans., Inc. (July 1971) (O, p. 575 and 772)

(12) 104 M.C.C. 737-Yellow Freight-Merger-Watson-Wilson (December 1968) (ERO appendix D, p. 12) (O, p. 764)

(13) MC-F-9918, Mercury Freight Lines, Inc.-Purchase (Portion)-Sam N. Cole (April 1969) (ERO, appendix D, p. 27) (O, p. 771)

(14) West Brothers-Extension-Natchez and Baton Rouge (ERO appendix D, p. 29) (O, p. 772)

(15) MC-F-9871, Admiral-Merchants-Control-Jack Cole-Dixie Highway Co. (November 1967) (ERO appendix D, p. 36) (O, p. 777)

(16) MC-F-10107, Jack Cole-Merger-Dixie Highway (October 1968) (O, p. 634)

(17) 109 M.C.C. 76, Consolidated Freight-Control (1969) and MC-42487, Sub 744 (January 1971) (O, p. 759)

(18) MC-F-9822 and MC-35320 (Sub 109), T.I.M.E.-DC (May 1970) (O, p. 762)

(19) 110 M.C.C. 892 (1969), Georgia-Florida-Alabama Transp. Co. Extension (O, p. 774)

(20) MC-41432 (Sub 103), East Texas Motor Freight, Inc. Ext.-Mississippi and Louisiana Points (1971) (O, p. 779)

(21) MC-F-10260 and MC-31389 (Sub 120), McLean Trucking Co.-Purchase-S. Z. Harrison (August 1970) (O, p. 784)

(22) MC-31389 (Sub 121), McLean as substituted applicant for Herrin (March 1970) (O, p. 784)

(23) 112 M.C.C. 558 (1970) Braswell Motor Freight Lines, Inc., Ext., MC-111383 (Sub-No. 17) (July 1971) (O, p. 792)

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SUPREME COURT, U. S. No. 73-1009

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

JOHNSON MOTOR LINES, INC.,
Appellant,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas

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JURISDICTIONAL STATEMENT

BRYCE REA, JR.
DONALD E. CROSS
918 - 16th Street, N.W.
Washington, D. C. 20006

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. ———

JOHNSON MOTOR LINES, INC.,
Appellant,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas

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JURISDICTIONAL STATEMENT

Appellant Johnson Motor Lines, Inc. appeals from the judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, permanently enjoining and setting aside an order of the Interstate Commerce Commission granting appellant's application for a certificate of public convenience and necessity.[1]

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[1] By order entered November 13, 1973, in No. A-475, this Court fixed January 8, 1974, as the date for docketing the appeals of Johnson Motor Lines, Inc., Bowman Transportation, Inc., Red Ball Motor Freight, Inc., and Lorch-Westway Corporation, et al. These appellants are jointly filing the appendix required by Supreme Court Rule 15.

OPINIONS BELOW

The opinions of the District Court are reported at 364 F. Supp. 1239 (Advance Sheets), and are reproduced in the Joint Appendix (JA-J, p. 739 and JA-N, p. 807). The opinion of the Interstate Commerce Commission, Division 1, in *Herrin Transportation Company Extension—Atlanta, Ga.* (retitled McLean Trucking Company Extension—Atlanta, Ga.), 114 M.C.C. 571 (1971), entered December 30, 1971, is reproduced in the Joint Appendix (JA-B, p. 101).

JURISDICTION

The action below was instituted by appellees pursuant to 28 U.S.C. §§ 1336, 2284, and 2321-2325 to set aside orders of the Interstate Commerce Commission entered December 30, 1971, and served January 24, 1972, in a proceeding styled Docket No. MC-1124 (Sub-No. 206), *Herrin Transportation Company Extension—Atlanta, Ga.* (retitled McLean Trucking Company Extension—Atlanta, Ga.). The judgment of the District Court was entered on September 11, 1973, and appellant's notice of appeal was filed in that Court on September 27, 1973. By order entered November 13, 1973, in No. A-475, this Court fixed January 8, 1974, as the date for docketing this appeal.

The jurisdiction of this Court to review the final judgment of the District Court on direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b). Cases sustaining this Court's jurisdiction on appeal from decisions of three-judge district courts reviewing orders of the Interstate Commerce Commission include *American Commercial Lines* v. *Louisville & N. R. Co.*, 392 U.S. 571 (1968); and *United States* v. *Dixie Highway Express, Inc.*, 389 U.S. 409 (1967).

QUESTIONS PRESENTED

1. Whether in reversing a Commission decision awarding certificates of public convenience and necessity the three-judge District Court abdicated its judicial function by mechanically adopting verbatim proposed findings and conclusions prepared by appellees.

2. Whether in reversing the Commission's decision awarding certificates of public convenience and necessity the District Court employed erroneous standards of judicial review and improperly substituted its judgment for that of the agency.

STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding §§ 1, 301, 901, and 1001; Sections 17(4), 17(5), 207(a), and 207(b) of the Interstate Commerce Act, 49 U.S.C. §§ 17(4), 17(5), 307(a), and 307(b); Sections 556, 557, and 706 of the Administrative Procedure Act, 5 U.S.C. §§ 556, 557, and 706; and Sections 2284(1) and 2284(5) of the Judicial Code, 28 U.S.C. §§ 2284(1) and 2284(5), are reproduced in the Joint Appendix (JA-A, p. 93).

STATEMENT

The Agency Proceeding

After eight years of administrative processing the Commission, on September 6, 1972, made final its December 30, 1971, award of certificates of public convenience and necessity to appellants Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc., and Bowman Transportation, Inc. The award to Johnson authorizes the single line carriage of general commodities between points in its existing 16-state system in the New England, Middle Atlantic, Southeast, and Gulf regions, on

the one hand, and, on the other, specified points on proposed routes from New Orleans, La., to Houston, Tex., and from Atlanta, Ga., to Dallas/Fort Worth, Tex. The Red Ball award ties its existing network of routes in ten southwestern states to proposed service at such southeastern cities as Atlanta, Ga., Birmingham, Ala., and Jackson, Miss. The Bowman grant unifies its present system in the eastern regions of the country with proposed service at eight points in Arkansas, two in Kansas, nine in Louisiana, ten in Mississippi, three in Missouri, and 15 in Texas (JA-B, pp. 110-112; 114-116; 116-119).

In the administrative proceeding giving rise to the awards the agency had before it on a consolidated record the certificate applications of ten motor common carriers supported collectively by over 900 shippers and receivers of freight. Testimony in opposition to the ten applications was adduced by 48 protesting carriers.[2] The case was heard by two hearing examiners (now called administrative law judges) who, on November 19, 1969, issued an initial decision finding all of the applicants capable of performing the service proposed, but concluding that there had been a failure to establish that the public convenience and necessity required the granting of the ten applications. Multiple and voluminous exceptions and replies were filed respecting the initial decision. On December 30, 1971, the Commission, Division 1, entered its report and order granting three and denying the remainder of the applications.[3]

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[2] The hearing record consists of over 23,000 transcript pages and almost 2,000 exhibits. In all, over 1,000 witnesses testified during 149 days of oral hearing held in eight cities, over a period of 17 months. The numerous pleadings of the parties are voluminous.

[3] Subsequently, the Commission, upon reconsideration of one of the denials, granted a fourth application, in part. *Jones Truck Lines, Inc., Extension—Atlanta, Ga.*, 117 M.C.C. 586, currently pending on judicial review in *Campbell Sixty-Six Express, Inc., et al.* v. *United States*, Civil Action No. 73-Civ-411-S (W.D. Mo.).

The Commission's approval of the three applications turns fundamentally upon several correlative findings. It finds that the record as a whole shows widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the southwest and the southeast, eastern seaboard, and gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature (JA-B, pp. 147-148). It also finds that the available transportation service between the points and to the extent authority is granted is not reasonably adequate to meet the demonstrated needs of the shipping and receiving public (JA-B, pp. 145-146). Finally, it finds the evidence, considered in its entirety, is convincing that the additional services of three of the ten applicants ". . . will serve a useful public purpose, responsive to a public demand and need" (JA-B, p. 145), and that the gains to be derived by the public from the three new services outweigh any adverse effect the protestants may experience (JA-B, p. 157).

The parties disappointed by the December 30, 1971, decision sought reconsideration and those in favor of it replied. By order served September 6, 1972 (JA-C, p. 363), the Commission, Division 1, acting as an appellate division, denied reconsideration of the Johnson, Red Ball, and Bowman awards, and they became final. On or about September 21, 1972, eleven protestants and one of the unsuccessful applicants filed petitions under the Commission's General Rule of Practice 101(a)(4), 49 C.F.R. § 1100.101(a)(4), requesting the entire Commission to rule and announce that the proceeding involves an issue of general transportation importance. On October 2, 1972, the entire Commission denied those petitions.

The District Court Proceeding

The action in the District Court to annul the Commission's decision was instituted on October 4, 1972, by

nineteen carriers opposed to one or more of the three awards. On October 10, 1972, the three-judge Court was designated to hear and determine the merits of the action. On November 7, 1972, the district judge to whom the application was made issued an order restraining, *pendente lite*, the Commission from implementing the assailed orders. *Arkansas-Best Freight System, Inc., et al.* v. *United States*, 350 F. Supp. 539 (W.D. Ark. 1972).

Briefs on the merits of the action were filed on a staggered schedule during the period February 15-July 16, 1973.[4] Meanwhile, as is customary on judicial review of Commission orders, appellees obtained from the Secretary of the Commission and in May 1973, lodged with the District Court a certified copy of the whole record before the agency. The Appendix hereto sets forth the affidavit of Mr. Robert L. Jones, Jr., a member of the bar of this Court, stating that the boxes containing this agency record do ". . . not appear to have been opened" during the pendency of the judicial review proceeding in the Court below (App., p. A-2).

The District Court did not hear oral argument on the merits of the action. On July 24, 1973, the three judges heard and disposed of certain motions filed by appellees and appellants (JA-E, p. 453). Making plain its belief that oral argument was unnecessary (JA-E, pp. 458, 576), the Court announced that it was taking the case under consideration (JA-E, pp. 567, 582). It also granted appellees' request that the parties submit proposed findings and conclusions (JA-E, pp. 571-572) and these were promptly filed by all parties (JA-F, p. 585; JA-G, p. 615; JA-H, p. 647; JA-I, p. 697).

On September 11, 1973, in an opinion which adopts substantially verbatim the findings of fact and conclu-

[4] The opening and closing briefs filed jointly by appellees total 293 pages. These documents do not pose specific questions for the Court's resolution.

sions of law proposed by appellees, the District Court sets aside the Commission decision and permanently enjoins the agency from issuing the certificates awarded to appellants, Johnson, Bowman, and Red Ball. The agency's decision is voided primarily on the grounds that it acted irrationally in the weight it accorded evidence and the inferences it drew from facts in the record on some of the issues in the case. Thereafter, the government moved the District Court to amend the judgment of September 11, 1973, by remanding the proceeding to the Commission for further action consistent with the Court's opinion. In a second opinion entered on October 4, 1973, the District Court denied the motion on the grounds that in light of its earlier opinion no useful purpose would be served by a remand (JA-N, p. 807).

THE QUESTIONS ARE SUBSTANTIAL

This case is of major significance to the transport community involved in the motor carriage of freight, including small shipments, between the eastern seaboard and southeast regions and the southwest. Over 900 shippers and receivers testified in the agency proceeding. A number of the carrier participants are included among the largest transportation companies in the country. Indeed, the case was considered by the Commission to be of such importance as to warrant comment in its 80th (1966), 81st (1967), and 86th (1972) Annual Reports to Congress.[5] This widespread interest is justified—for the Commission's proceeding and decision epitomizes the careful exercise of the agency's expert discretion in fulfilling one of the primary objectives of motor carrier regulation, ". . . to assure that shippers generally will be provided a healthy system of motor carriage to which they

[5] 80th Annual Report of the Interstate Commerce Commission, 1966, p. 34; 81st Annual Report of the Interstate Commerce Commission, 1967, p. 32; 86th Annual Report of the Interstate Commerce Commission, 1972, p. 33.

may resort to get their goods to market." *United States* v. *Drum*, 368 U.S. 370 (1962). The intemperate[6] reversal of the Commission's decision by the District Court denies the public the benefits of the transportation found by the Commission to be needed. Moreover, the method employed by the lower Court in preparing the decision and the grounds advanced for reversing the Commission will, unless corrected by this Court, stand as a dangerous precedent undermining well-established standards of judicial review of administrative agency action.

I

There are no decisions of this Court approving the verbatim adoption of proposed findings and conclusions by a District Court of three judges reviewing an order of the Interstate Commerce Commission. A trial judge's mechanical adoption of an opinion prepared by the prevailing party in a district court after a trial *de novo* was viewed with disfavor in *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 657 (1964). If the practice has any justification at all, cf. *United States* v. *Forness*, 125 F. 2d 928, 942 (2d Cir., 1942), *Chicopee Manufacturing Corp.* v. *Kendall Company*, 288 F. 2d 719, 724-725 (4th Cir., 1961), it is that the trial court, having heard the evidence in the first instance, may conserve its time by adopting as its own a statement of that evidence prepared by another. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173 (1944).

Here, the three-judge Court had not in the first instance heard the evidence and arguments underlying the agency decision. Rather, it sat as an appellate tribunal to hear and determine the action under established standards of

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[6] The opinion adopted by the District Court immoderately states: "Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusions" (JA-J, p. 787).

judicial review. *Ayrshire Collieries Corp.* v. *United States*, 331 U.S. 132 (1947). As we emphasize, *infra*, the opinion prepared by appellees and adopted by the District Court *does not* turn on the substantiality of the evidence supporting the Commission's decision. Instead, the opinion voids the agency's action primarily on the grounds that it acted "irrationally" in the weight accorded evidence and the inferences it drew from facts in the administrative record. Wholly apart from the propriety of that standard, the application of it is not a mechanical act. It is a difficult art requiring intimate knowledge of the facts and arguments in the administrative record; the exercise of a high degree of judicial skill and judgment; and the evaluation of many variable factors inherent in the regulation of entry into the field of interstate carriage. The opinion adopted below is devoid of any firm indication that the Court rather than appellees exercised those functions here.

Indeed, there are rather clear indications that the District Court did not adequately verify the correctness of the opinion it adopted. The whole agency record does not appear to have been reviewed by the Court (App., pp. A-1-A-2). The case was submitted for the Court's determination on July 24th; appellees' proposed findings were filed August 14th; and the decision was entered on September 11, 1973. Within this relatively short time span[7] the District Court could not, as a practical matter, have discovered much less unraveled the factual errors in appellees' proposed findings and conclusions. The following examples of some of the more glaring factual errors in the adopted opinion and the insight required in their recognition illustrate the problem:

1. The opinion erroneously charges the Commission with having acted "ex mero motu" in the weight it

[7] In contrast, the Commission's hearing examiners required over 18 months for the preparation of the initial decision and the case was pending on exceptions before the Commission, Division 1, for about 16 months.

accorded appellees' transit studies (JA-J, pp. 762-763; 778-779). In Johnson's March 24, 1970, exceptions to the initial decision the representativeness of appellees' studies was specifically challenged on the grounds that the time periods occurred subsequent to the notice of the commencement of the hearing (App., p. A-4).

2. Appellants are falsely accused of having failed to challenge the accuracy of the examiners' findings respecting the testimony of the public witnesses (JA-J, pp. 751-758). Johnson's exceptions charged the examiners with having "failed to fairly consider, evaluate, and make essential findings with respect to the public witness testimony"[8] (App., p. A-3).

3. The Commission is unjustly accused of irrationally giving less weight to appellees' transit studies than it accorded transit studies evidenced by appellants (JA-J, pp. 779-780). Neither the Commission nor Johnson relied upon Johnson's transit study as proof of any fact material to the Commission's decision. A detailed explanation of this facet of the case was contained in Johnson's May 10, 1973, brief in the Court below (App., pp. A-6-A-7). Thus, the opinion also erroneously states that ". . . applicants still commend [their transit studies] on brief" (JA-J, p. 780).

4. The Commission is erroneously accused of arbitrarily changing its standards of proof in "rejecting" appellees' transit studies (JA-J, pp. 779-780). First, appellees' studies were not rejected—they were simply found ". . . not [to] present as valid a picture

[8] Appellees did not except to the examiners' findings that applicants are "capable of performing the operations proposed" (Initial Decision, p. 13). Nevertheless, they continued to challenge the feasibility of Johnson's proposed operations in their subsequent pleadings before the agency and on brief in the Court below.

. . ." as the studies evidenced by the shippers (JA-B, p. 129). Second, precisely the same evidentiary standard was applied by the Commission in 1966 in *Braswell Motor Freight Lines, Inc., Extension—Atlanta*, 100 M.C.C. 482.[9]

5. The Commission is unjustly criticized for allegedly failing to discuss the enlargement in the number of carriers certificated during the course of the case to render single line carriage between various points proposed to be served by applicants (JA-J, pp. 782-784). The agency's decision expressly discusses these facts and takes them into consideration in deciding that the public convenience and necessity require still more service (JA-B, p. 106; p. 177 n.6; and text and footnotes at pp. 104-106, 108, 115-116, 130, 157, 173, 180, 321, 324, 326, 333-334, 339, 341, 344, 346, and 354).

6. The opinion erroneously states that the shippers' studies "comprised only a *few* shipments made over a very extensive period of time" (JA-J, p. 761). This phrase is a partial quotation taken out of context from a sentence in the initial decision reading in full: "In other instances [the shippers' studies] comprised only a few shipments made over a very extensive period of time; *and in some instances the bills represented substantially all shipments in a given period between certain points or areas*" (Initial Decision, pp. 10-11; emphasis supplied).

7. The opinion states that the periods of appellees' time studies "conform generally" to the periods covered by the shippers' studies (JA-J, p. 760). This finding is so vague as to defy precise verification of

[9] Rev. *sub nom., Dixie Highway Express, Inc.* v. *United States*, 268 F. Supp. 239 (S.D. Miss. 1967), rev. *sub nom., United States* v. *Dixie Highway Express*, 389 U.S. 409 (1967), I.C.C. affirmed, *Dixie Highway Express, Inc.* v. *United States*, 287 F. Supp. 473 (S.D. Miss. 1968).

its accuracy.[10] Only one protestant, Campbell Sixty-Six Express (JA-B, pp. 338-339), evidenced a transit study of shipments transported during periods in 1965. Shipper transit studies embracing 1965 shipments include Bostitch-Atlanta, Inc. (JA-B, p. 237); Munroy Company (JA-B, p. 239); Morgan & Lindsay Co. (JA-B, p. 246); Lorch-Westway Corporation (JA-B, p. 287); Utley Carpets & Draperies (JA-B, p. 289); Gibson Products Co. (JA-B, p. 290); Levines, Inc. (JA-B, p. 300); Leff Bros. Dry Goods Co. (JA-B, p. 303); and Sears, Roebuck & Co. (JA-B, p. 306).

Plainly, the recognition of errors of this kind and the ability to correct them presupposes a knowledge the Court below could not, as a practical matter, have independently achieved respecting the mammoth hearing record, the voluminous pleadings, and the lengthy decisions of the examiners and Division 1. Indeed, it is asking too much to assume that the adopted opinion is the product of three disinterested minds. Many of the findings in the opinion respecting "irrational" agency action pivot on comparisons of acts of commission and omission alleged to have occurred at the agency level but which do not appear in the Commission's decision. Assuming, *arguendo*, the correctness of a standard of review permitting comparisons of this kind, the Court below failed properly to perform its judicial function when, without notice to appellants, it mechanically adopted appellees' application of it. In any event, this practice is such a far departure from the accepted and usual course of judicial review proceedings as to warrant the exercise of this Court's power of supervision.

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[10] Over 200 shippers corroborated their oral transit time complaints with transit studies (JA-B, p. 126). Only 14 of the 48 protestants attempted to rebut those complaints with transit studies (JA-B, pp. 321, 326, 329, 332, 334, 336, 338, 339, 341, 342, 344, 347, 348, 349).

II

This Court's intervention in this case is also required to resolve a substantial question respecting the proper scope of judicial review. The test on judicial review of an I.C.C. certificate award is whether the action of the Commission is supported by substantial evidence on the record as a whole. *Illinois Central Railroad Co.* v. *Norfolk & Western R. Co.*, 385 U.S. 57 (1966). The opinion adopted by the Court below does not apply that test. Relying primarily on this Court's decision in *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971), and secondarily upon *Columbia Shippers and Receivers Ass'n, Inc.* v. *United States*, 301 F. Supp. 310 (D.Del. 1969), the opinion prepared by appellees creates a new standard of review.

Under the new test the District Court is called upon to substitute its judgment for that of the Commission whenever the Commission's findings of fact are challenged as "arbitrary and capricious" under Section 706 of the Administrative Procedure Act, 5 U.S.C. § 706(2)(a) (JA-J, pp. 771-775). As applied below, this new test also relegates the Commission to the role of a reviewing court which must sustain its examiners' findings of fact unless "clearly erroneous" (JA-J, pp. 748-758). This view, of course, has been expressly rejected by this Court in *Federal Communications Commission* v. *Allentown Broadcasting Corp.*, 349 U.S. 358 (1955). Next, the new test imposes upon the reviewing court the duty of independently judging the proper weight to be accorded *different kinds of evidence* in the agency record. For example, the decision below holds "irrational" a difference in evidentiary weight allegedly accorded by the Commission to (a) transit studies evidenced by applicants to establish the feasibility of their proposed operations and (b) transit studies evidenced by protestants to establish the adequacy of their existing service (JA-J, pp. 761-

762). The converse of this holding necessarily compels the Commission in future cases to accord equal weight to transit studies of these kinds. In the same vein, the decision below requires the agency to accord equal weight (a) to evidence of defects in the operations of an applicant for a certificate and (b) to evidence of inadequate service by a protestant to the application (JA-J, pp. 763-764). The Commission has repeatedly rejected this proposition. *Spector Freight System, Inc., Extension,* 111 M.C.C. 889 (1970); *East Texas Motor Freight Lines, Inc., Extension,* 115 M.C.C. 122 (1972). Indeed, one of the appellees was certificated during the course of this case notwithstanding its failure to accept shipments required to be transported by its existing certificates. *Campbell Sixty-Six Express, Inc., Extension,* 108 M.C.C. 80 (1968).

The adopted opinion contains additional indications that its authors viewed the role of the Court as a kind of "super-I.C.C." rather than one judicially reviewing the agency's decision. For example, the agency is unjustly criticized for having permitted the final decision to be made by Division 1 rather than by the entire Commission (JA-J, p. 787). This criticism overlooks that the entire Commission denied appellees' request for full Commission consideration and evidences a lack of understanding that the final decision applies standards and policies long extant in the Commission's regulation of entry. Next, the agency is improperly chastised for having permitted intervenors Lorch-Westway Corporation, et al., "to inject new issues" (JA-J, p. 786). Apart from the fact that this criticism is factually incorrect, it overlooks that intervenors' arguments had no material bearing whatever upon the outcome of the case. Finally, the Court's refusal to remand the case to the Commission (JA-J, pp. 787-788; JA-N, p. 797) flatly interjects the Court into the decisional process placed by Congress exclusively in the hands of the Commission under the Na-

tional Transportation Policy and Sections 207(a) and 207(b) of the Interstate Commerce Act (JA-A, pp. 93-95).

In short, the standard of review adopted below constitutes the court rather than the Commission as the arbiter of the public interest—a function this Court has expressly held inappropriate. *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515 (1946). This improper result is reached through misplaced reliance on cases *not involving agency fact-finding based on a record* developed in an adjudicatory-type proceeding. If permitted to stand uncorrected, this new standard of review will impose upon three-judge district courts the time-consuming and difficult work of weighing evidence and substituting the judicial judgment for that of the administrative tribunal on the evaluation of the myriad variable factors going into the determination of the present or future public convenience and necessity. The substantial evidence test was adopted deliberately to free the reviewing court of these tasks and aid in the uniform application of the statute. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 619-620 (1966). In this case the District Court avoided the complexity inherent in the application of the new standard by simply mechanically accepting appellees' application of it. Thus, the two questions posed in this appeal tend to merge into a single substantial question warranting plenary review by this Court.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. Appellant urges that jurisdiction be noted, that the judgment of the District Court be reversed, and that the case be remanded to that Court with instructions to affirm the Commission.

Respectfully submitted,

BRYCE REA, JR.
DONALD E. CROSS
918 - 16th Street, N.W.
Washington, D. C. 20006
Counsel for Appellant

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

APPENDIX TO
JURISDICTIONAL STATEMENT
OF
JOHNSON MOTOR LINES, INC.

A-1

AFFIDAVIT OF ROBERT L. JONES, JR.

STATE OF ARKANSAS)
) ss
COUNTY OF SEBASTIAN)

My name is Robert L. Jones, Jr. I am fifty-one (51) years of age. I have been actively engaged in the private practice of law in the City of Fort Smith, Arkansas, continuously since September of 1948 (with the exception of 21 months in 1950-52 when I served on active duty in the Judge Advocate General Corps of the United States Army). I am admitted to practice before the Arkansas Supreme Court, the United States District Court for the Western District of Arkansas, the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States. I am local counsel in Fort Smith, Arkansas, for Johnson Motor Lines, Inc., Bowman Transportation, Inc., and Lorch-Westway Corporation, et al, intervening shippers in the case in the United States District Court for the Western District of Arkansas, Fort Smith Division, styled "Arkansas-Best Freight System, Inc., et al vs United States of America and Interstate Commerce Commission, et al, No. FS-72-C-65".

On November 12, 1973, at the request of co-counsel for the named clients, I went to the office of the Clerk of the United States District Court, Western District of Arkansas, Fort Smith Division, for the purpose of conferring with the Clerk concerning matters related to the preparation and transmittal of the record to the Supreme Court of the United States in connection with the appeal from the judgment of this Court entered September 11, 1973, and the order of this Court entered October 4, 1973. The Clerk, Honorable E. A. Riddle, specifically requested instructions with reference to transmittal of the record of the proceedings before the Interstate Commerce Commission, which he stated was stored in boxes in the base-

ment of the Federal Building (the Clerk's office is on the third and top floor of the building). I accompanied Mr. Riddle to the basement to a store room which was locked and we gained entrance by a key in the possession of Mr. Riddle. Mr. Riddle pointed out to me four (4) boxes, size approximately two and a half feet in height by two and a half feet in width and two feet in depth, which had been stamped filed on May 23, 1973 on the outside of the boxes by Mr. Riddle's office. Mr. Riddle informed me that the boxes containing the record of the proceedings before the Interstate Commerce Commission, upon receipt by his office, were stored in this store room and to his knowledge had been in the store room continuously since receipt. A more detailed inspection of the boxes revealed that three out of the four large boxes had been opened and each large box contained two or more smaller boxes. These smaller boxes did not appear to have been opened. I instructed Mr. Riddle to have the four larger boxes with content undisturbed crated into one large container and shipped to the Clerk of the Supreme Court of the United States.

Further affiant sayeth not.

/s/ Robert L. Jones, Jr.
ROBERT L. JONES, JR.

Subscribed and sworn to before me, this 16th day of November, 1973.

/s/ Mary E. Burrows
Notary Public

[SEAL]

My Commission Expires:

April 26, 1977.

EXCERPTS FROM MARCH 24, 1970 EXCEPTIONS OF JOHNSON MOTOR LINES, INC. TO THE REPORT AND ORDER RECOMMENDED BY THE HEARING EXAMINERS

In all the circumstances, the examiners failed to fairly consider, evaluate, and make essential findings with respect to the public witness' testimony in support of the application of Johnson, a serious applicant. As discussed more fully in Part III hereof, the examiners even more clearly failed to consider, evaluate, and make essential findings as to the effect, if any, of Johnson's proposal on existing carriers. (Exceptions, p. 14.)

* * * *

It is, of course, true that in an effort to rebut the showing of the transit times experienced by the supporting witnesses, a number of the protestants sponsored a series of similar service exhibits designed to show that the transit time provided by them is more expeditious than the transit times depicted in the public witnesses' exhibits. But as pertains to the area involved in the Johnson application, the transit times evidenced by the joint line protestants depicted only a portion of the total services involved in the joint line handling of shipments moving from origins to destinations on the eastern seaboard and the Southwest. Thus, for example, the elaborate transit time studies submitted by ETMF, Gordons, Cole Dixie, Transcon, and Mercury Freight did not and could not evidence the total transit time provided, for example, on a shipment originating at Dallas, Tex., and terminating at Charlotte, N. C. For, as has been seen, the systems of these carriers end at the gateways of Memphis or Birmingham or Atlanta or New Orleans. There is no evidence in this record by any carrier protesting Johnson of the transit time being performed on joint line shipments, for example, between the Atlanta or Birmingham gateways, on the one hand, and, on the

other, points in the Southeast, Middle Atlantic, and New England states. Moreover, the periods of time covered by the joint line protestants' service exhibits generally occurred subsequent to the notice of the commencement of the hearing herein. Thus, the protestants were aware during the study periods that the results were to be evidenced in this proceeding. Moreover, the through-transit times about which Johnson's supporting shippers and receivers complain and which are reflected in their service exhibits are, on the whole, not directly disputed or explained in the service exhibits sponsored by any carrier protesting the Johnson application on the grounds that its joint line service is reasonably adequate.

The only protesting carriers having significant single line service in the areas presently and proposed to be served by Johnson are Ryder and Roadway, both of which evidenced their transit times in an effort to rebut the transit times complained of by the supporting shippers. As to Ryder, the testimony of the public witnesses shows substantially greater transit times than the Ryder studies —later prepared—would indicate; and, furthermore, Ryder's own standards of service (Johnson Abst. VII, p. 302) generally call for at least one day more of transit time than Johnson is proposing in order to satisfy the numerous requests of the shippers now using Ryder for faster and more consistent transit (e.g., Witness Nos. 64, p. B-1; 88, p. B-1; 460, p. B-2; 629, p. B-2; 538, p. B-5; 404, p. B-81).

The Roadway service study depicted service rendered during a two week period, May 29-June 11, 1966, between Texas, on the one hand, and, on the other, Roadway terminals in 13 eastern states. The period of the study it will be noted occurred more than two months subsequent to the Commission's notice of the commencement of the hearings on March 21, 1966. Moreover, the study was deficient in many respects and it is, accord-

ingly, entitled to little weight. See Johnson Abst. VII, pp. 240-259. In any event, even assuming the validity of the Roadway transit study the fact is that it is but one of the two carriers shown on this record to be available for the single line transportation needed by the shippers supporting the Johnson application between territories where the need for good competitive single line service is clear. (Exceptions, pp. 25-27.) (Footnote omitted.)

EXCERPTS FROM THE MAY 10, 1973 BRIEF OF JOHNSON MOTOR LINES, INC. FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION CA NO. FS-72-C-65

Proper Weight and Inferences are Accorded and Drawn From Evidence of the Past Operations of the Applicants on the Question of Whether They Will Perform as Proposed in Their Applications

Plaintiffs argue that the agency paid too little heed to their claim that the applicants will not *prospectively* perform the expedited transport service proposed in their applications (Pltf. Br., pp. 150-157). This is a claim often pressed by protestants to certificate applications and its resolution obviously calls for the exercise of experienced and expert agency judgment. Here, *both* the examiners and the Commission rejected plaintiffs' claim. The examiners specifically found the applicants to be ". . . capable of performing the operations proposed" (RR&O, Sh. 13). The agency considered the question at length and finds the challenge to be without merit. 114 M.C.C. at 611.

The essence of plaintiffs' claim is this—they urged the agency to *infer* the ultimate fact of applicants' future nonperformance from evidence of the *past* operations conducted by the applicants within the regions *presently* served. Declining to draw that inference, the agency stated:

> "Evidence that applicant's transit time for existing services over a shorter distance is more than . . . [the proposed transit time] is not conclusive proof that it will not render . . . [the proposed transit time] between the points proposed. The service and highway conditions between the service points and

routes may be so different that what happens in one case may bear no relation to what will happen in the other." 114 M.C.C. at 611.

In the continued assault on this finding before the Court, it is plaintiffs, not the agency, who ignore the evidence. Witness Sloan evidenced Johnson's past operations as well as its proposed expedited service (X55 and X56). In the course of two days of cross-examination, Mr. Sloan unequivocally testified that Johnson's prospective operations are in no way comparable to its past service—as he put it, ". . . to compare the two [operations] would be like trying to compare apples to oranges" (Tr. 1017). Complementing the testimony of Witness Sloan, Johnson's Witness Henderson proved that current revisions in Johnson's operating practices ". . . will further assure our ability to maintain the proposed operating schedules" (X61, p. 5).

In the face of this overwhelming evidence of Johnson's future ability, the Commission quite properly *declined* to draw the inference protestants claim should have been extracted from one exhibit. Furthermore, there is abundant precedent for this kind of agency action—it having reached the same result on the same issue in, among other cases, *West Brothers, Inc., Extension—Baton Rouge, La.*, 106 M.C.C. 792 (1968), and *Transamerican Freight Lines, Inc., Extension—Columbus, Ga.*, 115 M.C.C. 416 (1972). (Brief, pp. 40-41.) (Footnote omitted.)

CERTIFICATE OF SERVICE

I, Donald E. Cross, counsel for appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 8th day of January, 1974, I served copies of the foregoing document on the parties hereto, postage prepaid by first class or air mail, as follows:

Thomas A. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

Seymour Glanzer, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Robert L. Jones, Jr., Esq.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Honorable Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

Maurice F. Bishop, Esq.
601-609 Frank Nelson Building
Birmingham, Alabama 35203

Jerry C. Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Charles S. Rhyne, Esq.
Courts Oulahan, Esq.
839 - 17th Street, N.W.
400 Hill Building
Washington, D. C. 20006

DONALD E. CROSS

SUPREME COURT, U. S.
73-1070
JAN 8
MICHAEL RODAK, JR.

NO. ~~A-475~~

IN THE

Supreme Court of the United States

October Term, 1973

~~UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC.~~; RED BALL MOTOR FREIGHT, INC.; ~~and LORCH-WESTWAY CORPORATION, ET AL.~~, *Appellants*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL., *Appellees*

On Appeal From The United States District Court For The Western District of Arkansas, Fort Smith Division

JURISDICTIONAL STATEMENT

CLARK, THOMAS, DENIUS, WINTERS & SHAPIRO
MARY JOE CARROLL
JERRY PRESTRIDGE
P. O. Box 1148
Austin, Texas 78767
Attorneys for Red Ball Motor Freight, Inc.

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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On Appeal From The United States District Court For The Western District of Arkansas, Fort Smith Division

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the district court below, dated September 11, 1973 and October 4, 1973, are reproduced in the Joint Appendix to Jurisdictional Statement of the appellants, Bowman Transportation, Inc., Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc. and Lorch-Westway Corporation, et al. (J. A., Apps, J & L). The opinions are reported in *Arkansas-Best Freight System, Inc. v. United States*, 364 F. Supp. 1239 (1973).

The report and order of the Interstate Commerce Commission, Division One (J.A., App. B) is reported at 114 MCC 571. The order of the Commission Division One acting as Appellate Division overruling petition for further hearing and reconsideration (J.A., App. C) and the order of the Commission stating that no issue of general transportation importance is involved (Appendix B to this Jurisdictional Statement) are not reported in a printed decision.

JURISDICTION

The judgment of the three-judge court was entered September 11, 1973 (J.A., App. J). Notice of appeal was filed by Johnson Motor Lines, Inc. on September 27, 1973 (J.A., App. P); notice of appeal was filed by Bowman Transportation, Inc. on October 2, 1973 and October 19, 1973 (J.A., App. N); notice of appeal was filed by Red Ball Motor Freight, Inc. on October 10, 1973 (J.A., App. O); notice of appeal by Lorch-Westway Corp., et al, was filed on November 5, 1973 (J.A., App. M); and notice of appeal was filed by the United States of America and the Interstate Commerce Commission on November 9, 1973 (J.A., App. Q). On November 13, 1973 Mr. Justice Blackmun extended the time for docketing appeals to and including January 8, 1974 (J.A., App. T). The jurisdiction of this Court is conferred by 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the three-judge court, in setting aside the administrative agency decision, abdicated or abandoned its judicial function by (1) adopting verbatim the proposed findings of fact and conclusions of law submitted by plaintiffs; (2) failing to examine or consider the record

made before the adminstrative agency and on file with the Court; (3) failing to give independent judicial consideration and review to the separate grants of authority to the intervening defendant motor carriers; (4) changing the decisional relationship between the agency and its examiners contrary to law; (5) rejecting Supreme Court precedent limiting the Court's scope of review and thereby substituting its judgment for that of the agency charged with the responsibility therefor; and (6) failing to comply with the jurisdictional requirement of the full three-judge court hearing and determining the case on its merits.

STATUTES INVOLVED

The Joint Appendix of appellants contains a listing of the statutes involved in this case (J.A., App. A).

STATEMENT

On May 17, 1965, Red Ball filed an application with the Interstate Commerce Commission seeking authority to extend its existing regular route motor carrier operations into Greenville, Mississippi, Birmingham, Alabama and Atlanta, Georgia. Red Ball proposed to coordinate the service at Greenville, Atlanta and Birmingham with that presently provided to as to perform a single-line motor carrier service between Atlanta and Birmingham, on the one hand, and, on the other, in excess of 1,400 cities, towns and villages served by Red Ball, including approximately 550 in Texas, 475 in Louisiana, and 125 in Arkansas.

At the time Red Ball filed its application, there were either pending or subsequently filed applications by other motor carriers which generally involved service in the same geographical area of the United States involved in

the Red Ball proceeding. As a result of pre-hearing conferences by the Commission, the Red Ball and nine other motor carrier applications were assigned for hearing. The examiners consolidated the applications in order to have one record and between March, 1966 and August, 1967, conducted 149 days of hearing at various cities and heard testimony from some 1,016 witnesses, including 933 shippers or receivers of freight appearing in support of one or more of the applications under consideration. In support of its application, Red Ball presented 130 supporting public witnesses; 23 additional public witnesses specifically supported the Red Ball application. The record before the Commission contains 23,423 pages of transcribed testimony and 1,989 exhibits.

Twenty-seven months after the close of the hearing, the examiners issued the initial administrative decision in the proceeding and recommended to the Commission that all ten of the applications be denied.

Exceptions by eight of the ten applicants and replies by opposing carriers were filed. Forty-one companies which appeared at the hearings in support of Johnson intervened and filed exceptions with the Commission. On January 24, 1972 Division One of the Commission served its order which found, contrary to the examiners' recommendation, that the record in its entirety established a public demand and need for additional motor carrier services to the extent granted (J.A., App. B, pp. 599 and 600). Division One then determined the quantum of additional service necessary and found that, on a comparative basis, of the four applicants domiciled in the Southwest, Red Ball had made a superior showing with respect to each of the criteria traditionally used by the Commission in choosing from among multiple applicants for similar authority (J.A., App. B, pp. 601-604).

Division One also found that the applications of two southern domiciled carriers, Johnson and Bowman, should be granted.

Opposing carriers filed petitions for reconsideration to the Order of Division One and Red Ball replied. By Order served September 6, 1972, Division One of the Commission, acting as an Appellate Division, overruled the petitions for reconsideration and further hearing (J.A., App. C).

Opposing motor carriers filed a petition with the Commission seeking a declaration that an issue of general transportation importance be declared. The entire Commission, by Order dated October 2, 1972, denied this petition (Appendix B hereto).

On October 4, 1972, some of the protestants before the Commission filed the instant action, and on that same day, United States Senior District Judge to whom the matter was presented entered an order requesting the Commission to refrain from issuing and putting into effect the certificate of public convenience and necessity to be issued to Red Ball. Appellees sought a temporary restraining order pending final determination on the merits.

Red Ball intervened as a defendant, and on November 1, 1972 hearing on the temporary restraining order was conducted before one of the members of the three-judge panel assigned to hear and determine this cause. On November 7, 1972 the Court entered its Order and Judgment granting the temporary restraining order suspending the operation of the Commission's Orders pending final disposition of the cause on the merits. *Arkansas-Best Freight System, Inc. v. United States*, 350 F.Supp. 539 (1972).

Plaintiffs filed opening briefs with the Court on February 15, 1973; defendants and intervening defendants filed

briefs by May 30, 1973; plaintiffs filed reply briefs on July 16, 1973.

On June 29, 1973 plaintiffs filed a motion for leave to supplement their complaint seeking review of an Order of the Commission in *Jones Truck Lines, Inc. Extension-Atlanta, Georgia,* 117 MCC 586. Red Ball filed a motion to dissolve the temporary restraining order and to determine plaintiffs' application for preliminary injunction. The full three-judge court was convened to hear plaintiffs' motion on July 24, 1973, and Red Ball requested consideration of its motion at the same hearing.

The Court denied plaintiffs' motion to supplement the complaint and then announced that the original cause of action would be submitted on the merits with no further oral argument by the parties (J.A., App. E). A stipulation to that effect was entered into by all parties, and the Court issued an appropriate order which also permitted all parties to file proposed findings of fact and conclusions of law.

The Court entered its judgment and opinion on September 11, 1973 and subsequently overruled a motion of the defendant United States seeking a remand of the cause to the defendant Commission. The second order and judgment of the Court overruling the motion of defendant United States to remand is dated October 19, 1973 (J.A., App. J and L).

THE QUESTION IS SUBSTANTIAL

The opinion before the Supreme Court affects the decisional process of all administrative agencies as well as the procedural due process and scope of judicial review of virtually all administrative agency decisions. The basic question presented is whether a three-judge district

court abandoned or abdicated its judicial function by adopting verbatim as its opinion the proposed findings of fact and conclusions of law submitted by the prevailing parties, plaintiffs below. The issues and questions which are of equal significance revolve around and relate to the failure of all three judges to hear and determine this case, their failure to make an independent review of the record before them, their failure to present an opinion which could be considered the product of disinterested judicial minds, and their failure to follow established precedent in reviewing the agency decision.

The opinion of the three-judge court which the Supreme Court is asked to review is believed to present the most complete abdication or abandonment of the judicial function and duty of a court that can be imagined. The only role performed by the three judges in determining the merits of this case was to receive and consider proposed findings of fact and conclusions of law submitted by the parties to select from among them and to adopt verbatim those of the plaintiffs (J.A., App. I and App. J).

In the zeal of representing a client, the interest advocate obviously prepares findings and conclusions which are, at the very least, couched in terms and presented in a light most favorable to the client. Such is the advocate's duty. The duty of the judiciary, however, is to consider all facts and contentions and to approach the decisional process with a disinterested mind. That duty is breached when, as here, the Court mechanically adopts the facts and conclusions submitted by one party while failing and refusing to discuss issues or consider facts favorable to another party or to consider the various cases as separate and independent matters raising separate and independent issues and consideration.

The circumstances here are to be distinguished from a Court's requesting submissions of findings and conclusions by all parties for the purpose of assisting the Court in making its own independent consideration and determination of the issues in a complicated controversy. This complicated controversy involves disputed legal issues arising out of a large number of facts but the opinion of the three-judge court gives no indication whatsoever of independent consideration of them. Plaintiffs' proposed findings were adopted verbatim. The submission of findings and conclusions by all parties does not and should not relieve the Court of the duty of performing its judicial function of making the findings and conclusions which are the product of the Court's own careful and disinterested consideration of the entire case.

The question of the propriety of a three-judge court's adopting verbatim the proposed findings and conclusions submitted by one of the parties to the case has not been heretofore directly before this Court. Various Circuit Courts of Appeal have discussed the question and generally condemned the practice where it resulted in depriving the parties' and the reviewing court's being given an opinion based upon the trial court's own careful consideration of the case. *United States v. Forness,* 125 F.2d 928, 942 (2nd Cir., 1942); *Chicopee Manufacturing Corp v. Kendall Company,* 288 F.2d 719, 724 (4th Cir., 1961); *Louis Dreyfus & Cie. v. Panama Canal Company,* 298 F.2d 733, 738-39 (5th Cir., 1962); *Roberts v. Ross,* 344 F.2d 747, 751-53 (3rd Cir., 1965); *Featherstone v. Barash,* 345 F.2d 246, 249 (10th Cir., 1965); *United States v. Howard,* 360 F.2d 373, 378 (3rd Cir., 1966); *In Re Las Colinas, Inc.,* 426 F.2d 1005, 1008-10 (1st Cir., 1970); *Industrial Building Materials, Inc. v. Interchemical Corporation,* 437 F.2d 1336, 1339-40 (9th Cir., 1970).

The verbatim adoption by the three-judge court of plaintiffs' proposed findings and conclusions results in counsel for plaintiffs preparing the opinion of the Court which sets forth the basis and reasons for the Court's judgment. This preparation by victorious counsel of the opinion of the Court deprived Red Ball of any independent consideration of its case by the three judges and thereby denied Red Ball due process of the law. The three-judge court held the decision of the Commission arbitrary as to all three grants of authority without giving any independent consideration to the substantial evidence supporting the multitude of findings of the Commission supporting only the grant to Red Ball. Although Red Ball urged the Court to consider the detailed findings of the Commission which supported the finding of public need for the single-line service proposed by Red Ball, the Court rejected this suggestion and adopted conclusions of law which state that the Commission's decision in the Red Ball case was arbitrary and capricious because it was based on only portions of the record and not the entire record. This Court, however, is not informed as to the portions of the record in the Red Ball case which the three-judge court believed were not considered by the Commission. The fact that several applications were combined for hearing should not deprive the separate applicants of the right of each to a determination on its own case. Consolidation for hearing purposes does not require a single order either granting or denying all applications.

The erroneous adoption by the three-judge court of the plaintiffs' proposed findings and conclusions and the resulting failure of the three-judge court to consider the applications independently and separately each from the other is compounded by the fact that the Court did not undertake to examine or consider the record made before

the Commission and filed with the Court. Attached to this Jurisidictional Statement as Appendix A is a true copy of the Affiavit of Robert L. Jones, Jr., Attorney at Law, of Fort Smith, Arkansas, which establishes that the record before the Commission was filed with the three-judge district court in Fort Smith, Arkansas and remained unopened in the basement of the Federal Building in Fort Smith, Arkansas until requested to be filed with the Supreme Court. It seems, therefore, unlikely that any one of the three judges comprising the panel required to hear and determine this cause on the entire record before the Commission ever examined any significant portion of the record made before the Commission. It is true that plaintiffs and defendants submitted to the Court abstracts of any testimony of the witnesses appearing in the proceedings before the Commission, but those summaries of the testimony comprise no more than a minute part of the record made before the Commission, and all such abstracts of testimony were prepared in connection with and submitted in support of the briefs filed by the respective parties after the close of the record and prior to the initial decision issued by the examiners. These abstracts accurately reflect a summary of the testimony of the witnesses but examination of exhibits and other matters contained in the record would be required for any true and accurate "review" of the record.

Although the Court below stated in its opinion that it considered a number of the exhibits and much of the testimony of record in the proceeding, the opinion does not reflect or specify any portions of the record other than the examiners' recommended order and the abstracts of testimony which the Court might have relied upon in concluding that plaintiffs' proposed findings and conclusions

were correct and that the Commission's decision was arbitrary and unlawful.

The Court's opinion is particularly lacking in specificity of any portion of the record which supports the conclusion that the Commission's grant of authority to Red Ball was arbitrary, unreasonable or otherwise unlawful. Plaintiffs' proposed findings and conclusions were adopted by the trial court without any change or modification and without any discussion of the contentions, positions, issues and evidence in the proceeding before the Commission. That is particularly true of the manner in which the trial court set aside the Commission's grant of authority to Red Ball. Such action by a lower court is so divergent from established administrative review as to call for close scrutiny by this Court. The mechanical adoption of plaintiffs' proposed findings and conclusions results in an opinion of the three-judge court below which does not reveal any discerning line of the decision as basis for reversal of the grant of authority to Red Ball. The failure of the Court to perform its judicial function and the failure of the Court to examine and discuss in detail those portions of the record relied upon results in an opinion with findings and conclusions as to Red Ball which are sketchy, and the Court's reasoning in concluding that the grant to Red Ball was arbitrary and unlawful is scarcely discernible.

In substance only two portions of the three-judge court's opinion speak specifically to the Red Ball proceeding (J.A. App. J., Conclusions Nos. 17 and 20). One on which plaintiffs laid great stress on in their brief and on which they relied heavily in their proposed findings and conclusions involves the Commission's reference to an industry publication concerning the closing of a terminal of one of the parties in the Commission proceeding. Plaintiffs argued in their petitions for reconsideration *before*

the Commission that the Commission did not also consider the same industry publication as showing what they referred to as "terminals" of Red Ball being closed. In its reply *at the Commission level,* Red Ball pointed out that the points which were eliminated from the industry publication were not "terminals" and that the service of Red Ball to the many hundreds of points involved in the proceeding was not affected. The three-judge court, in adopting plaintiffs' findings and conclusions, found that the Commission acted arbitrarily in referring to the industry publication concerning one of the carriers involved in the proceeding and did not consider the same publication which they alleged showed Red Ball had closed "terminals." The Court's opinion in this regard makes an erroneous finding of fact concerning this issue; the Court erred also in adopting plaintiffs' conclusions of law that the Commission's decision was unlawful (J.A. App. J., Conclusion No. 20). The pleadings of Red Ball before the Commission and the Court below established that Red Ball did not close "terminals," but the Court's opinion does not discuss these facts or contentions. Of equal error is the adoption by the Court of plaintiffs' allegations and contentions that the Commission did not "consider" the facts alleged and argued by them before the Commission. There is no proof of the validity of plaintiffs' allegations concerning what the Commission considered, and the Court below failed to distinguish plaintiffs' pleadings and argument from facts established in the record.

Assuming for the purposes of argument that plaintiffs' contentions had some validity, the opinion of the Court fails to hold that the Commission's finding that a public need for additional service exists was in error. The industry publication issue argued by plaintiffs relates to only one of the criteria considered by the Commission in its

choice of Red Ball as the superior southwestern applicant to provide the service needed and *did not* relate to the finding of the Commission that there exists a public need for the service (J.A., App. B, 602, 603).

The only other specific separate issue concerning the grant to Red Ball discussed in the Court's opinion concerns an allegation that the Commission failed to consider that Red Ball maintained tariff restrictions of a similar nature which the Commission found to be a service complaint about other carriers. The facts concerning the tariff matters were presented during hearing, were considered by the examiners, and considered by the Commission. The Court below erred in adopting as a legal conclusion the allegation of plaintiffs that the Commission "did not consider" all facts of record when the finding is in direct contradiction of the Commission's findings and there is nothing before the Court to establish otherwise (J.A., App. B, p. 575).

The Court adopted a proposed conclusion of law by plaintiffs that the Commission's grant to Red Ball and others was without any rational basis and, therefore, capricious because the Commission made no comparative analysis of the quantity of service available between the involved points (J.A., App. J, Conclusion No. 21). This is an erroneous conclusion because the Commission specifically stated that it did consider all pertinent evidence and Commission decisions and enumerated some 23 of them throughout its order. These were all called to the Court's attention in brief by Red Ball as well as the specific Commission finding in the Red Ball case that "none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the exten-

sive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other, the territory Red Ball now serves" (J.A., App. B, p. 603). The Court fails to discuss this specific finding that even considering the action of protesting carriers in acquiring operating rights in the geographical area of the Red Ball proceeding during the six and one-half years the Red Ball application was pending, none of those carriers was in a position to provide the single-line service between Atlanta and Birmingham and the approximate 1,400 cities, towns and villages then served by Red Ball.

Virtually all of the other findings and conclusions adopted by the Court treat the Commission's decision and the three successful applicants as an inseparable grant of authority. The failure of the Court to treat the decision of the Commission and the grant to Red Ball independent of the Johnson and Bowman grants denied Red Ball the consideration required by due process of law.

This treatment, as proposed by plaintiffs, resulted in erroneous findings and conclusions being adopted in the Red Ball proceeding. In addition to those previously enumerated, the three-judge court adopted specific erroneous findings in the Red Ball case with respect to (1) a separate, accurate description of the proposed service by Red Ball; (2) the nature of the evidence presented by Red Ball; (3) the manner in which Red Ball presented its abstract of evidence to the examiner; (4) an implication that Red Ball presented transit-time study similar to the other applicants; and (5) an inference that the service of Red Ball was shown to be inferior in some respect. There are numerous findings adopted by the Court which have no relevance to the Red Ball case and many more which infer or imply facts which do not relate to the Red Ball case. Most of the conclusions of law

other than specifically discussed above are not pertinent to the Commission's decision in the Red Ball proceeding.

Much of the error of the Court in this regard is predicated upon plaintiffs' proposed findings which urge the examiners' report and recommended order to deny all 10 applications as the order and decision the Commission should have entered. The heart of plaintiffs' case as presented in their pleadings, their brief and in their proposed findings and conclusions is that the Commission erred in reaching a different conclusion from that recommended by its examiners. The Court, by adopting the plaintiffs' proposed findings and conclusions, has changed the decisional relationship between an administrative agency and its examiners and the standards of review which the Supreme Court has established. The opinion of the Court below states that the Commission is not bound by the decision of its hearing examiners. Nevertheless, the Court says since the Commission did not specifically reject any of the findings of the examiners, the Commission is without discretion or power to reach a different conclusion based on the same findings. Plaintiffs proposed conclusions, adopted by the Court, imply a hidden or improper motive on the part of the Commission in granting the Red Ball application and, therefore, a violation and abuse of the spirit of the discretion reposed in the Commission. There is no clarification or explanation of this accusation by the Court and it should at least be disregarded if not condemned.

The plaintiffs' pleadings, briefs and proposed findings and conclusions charge the Commission with improperly according weight to certain evidence. The three-judge court has held the Commission acted unlawfully in reaching a different conclusion from the examiners without rejecting that part of the evidence not in support of the

Commission's conclusion (J.A., App. J, Conclusion No. 24). This is an erroneous conclusion of law under the opinions of the Supreme Court. *United States v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 535-36, 66 S. Ct. 687, 698, 90 L.Ed. 821 (1946); and *Illinois Central R.R. v. Norfolk & Co. Ry.*, 385 U.S. 57, 66, 69, 87 S. Ct. 255, 17 L.Ed. 2162 (1966). *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 493, 71 S. Ct. 456, 95 L.Ed. 456 (1951); *Federal Communication Commission v. Allentown Broadcasting Corp.*, 349 U.S. 358, 364-65, 75 S. Ct. 855, 99 L.Ed. 1147 (1955).

The effect of the Court's determination to adopt plaintiffs; findings and conclusions is to seize unto itself and, indirectly, plaintiffs, the power to determine public convenience and necessity in the Red Ball proceeding. The opinion acknowledges the Court's limited scope of review but then holds that if the Commission's action is merely alleged to be arbitrary, capricious, and an abuse of discretion, then a review on standards established by this Court to be applicable to administrative proceedings is to be abandoned. This conclusion is erroneous. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 86 S. Ct. 1018, 16 L.Ed. 2131 (1966).

The lower Court then finds that the conclusion of the Commission that the public interest required additional motor carrier service was not consistent with the findings of the examiners. The Court failed to consider or discuss the fact that the examiners approached their consideration of public convenience and necessity on the basis of either granting or denying all 10 applications rather than on the basis of questions as to whether any individual applicant had demonstrated a need for its proposed service. Red Ball complained of the examiners' approach in its excep-

tions. The Commission reviewed the entire record as well as matters that had occurred subsequent to the close of the hearing and concluded that there was a public need established for additional service (J.A., App. B, p. 599). The Commission then considered the quantum of service necessary to fulfill the demonstrated need and concluded that Red Ball should be one carrier granted authority. The findings of the Commission are detailed in its order, were specifically presented to the Court in brief, but were summarily rejected by the Court because in its judgment the findings of the examiners were more correct, thus making the Commission's decision arbitrary and capricious. The Court thus, patently exceeded its limited function on review. It is beyond the reviewing Court's function to choose between the examiners' report and the Commission's order or to hold the Commission's order unlawful because the Court feels the proper result was not reached. *United States v. Pierce Auto Freight Lines, Inc., supra.*

The Court's opinion holds there is no rational basis for the Commission's decision to accord less weight to certain evidence introduced by protesting carriers than to the transit studies introduced by public witnesses (J.A., App. J., Conclusion Nos. 12 and 17). In effect, the three-judge court has re-weighed or weighed again the evidence and tipped the scales in favor of the examiners. That also exceeds the Court's function on review. As to the rationality of the Commission's weight of the evidence, the reasons for its decision are detailed in its report (J.A., App. B, p. 596 and 599). The Commission did not "reject" protestants' traffic study as found by the three-judge court but considered all of them and concluded that for the reasons stated found they were entitled to less weight than the studies of the public witnesses (J.A., App. B, p. 599).

Each of the conclusions of the three-judge court that the Commission's treatment of applicants' and protestants' traffic studies was arbitrary and without rational basis is not pertinent to and serves no basis for concluding the Commission's grant to Red Ball was in error because Red Ball introduced no traffic studies as an applicant.

The three-judge court, by adopting plaintiffs' proposed findings and conclusions, finds repeatedly that the Commission failed to consider or refused to consider certain evidence in the record or facts alleged by plaintiffs to exist although outside the record. The Commission's order shows conclusively that this finding in numerous instances is erroneous. These allegations were specifically noted in Red Ball's brief to the Court. Had the three-judge court considered that part of the record made up of plaintiffs' pleadings before the Commission including (1) initial briefs, (2) replies to exceptions, (3) petitions for reconsideration to the Division One order; and/or (4) petitions seeking a declaration of an issue of general transportation importance, the Court could not have adopted these findings concerning lack of consideration by the Commission. All of the matters which plaintiffs allege were not considered by the Commission were presented to the Commission by them in one or more of the foregoing pleadings and replies thereto were made by Red Ball insofar as pertinent to its proceeding. Plaintiffs' argument goes to the weight given evidence by the Commission, and there is no basis to find as a fact that the Commissioners did not consider the evidence. In the absence of that fact, the conclusions of law that for that reason the Commission's action was arbitrary or an abuse of its discretion is also in error.

The three-judge court did not hear argument on the merits of this case. It is true that the parties stipulated

that nothing could be added by argument that was not contained in the various briefs, but a review of the transcript of the hearing on plaintiffs' motion to supplement their complaint demonstrates that the Court was not disposed to hear oral argument (J.A., App. E). Plaintiffs will obviously argue that oral argument was waived, but hearing and determining this case as a three-judge court is a jurisdictional requirement and cannot be waived. The three judges must fully perform their functions. *Ayrshire Collieries Corp. v. United States*, 331 U.S. 132, 67 S.Ct. 1168, 91 L.Ed. 1391 (1947).

Only one judge heard any argument concerning the Red Ball case and that was on a hearing for temporary restraining order. The matter before the three-judge court was plaintiffs' motion to supplement their pleadings to join another carrier in the action. The argument before the three-judge court dealt with that motion and not the merits of the Red Ball case. The single judge who decided the temporary restraining order felt that the case was "pretty thoroughly argued", but the issues are different and the other two judges were not present at that argument.

If the matter of argument can be dispensed with, then it is even more incumbent on the three-judge court to consider and discuss the contentions and position of the parties as set out in pleadings and briefs, to review the entire record and to prepare an opinion which is the product of the judges' own disinterested judicial expertise. The mechanical adoption of plaintiffs' findings and conclusions by the three-judge court deprived Red Ball of its rights under 28 U.S.C. 2325 to have the review of the Commission's grant of authority to it heard and determined by the full three-judge court.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

CLARK, THOMAS, DENIUS

MARY JOE CARROLL

JERRY PRESTRIDGE
P. O. Box 1148
Austin, Texas 78767
Attorneys for Red Ball Motor Freight, Inc.

January 1974

CERTIFICATE OF SERVICE

I certify that three copies of this jurisdictional statement have been served on each party separately represented in the proceeding by depositing the same in the United States Post Office at Austin, Texas, with first class postage prepaid, addressed to counsel of record at his post office address or with Air Mail postage prepaid where counsel resides 500 miles or more from Austin, Texas and three copies have been served on the Solicitor General, Department of Justice, Washington, D.C., 20503 and the Interstate Commerce Commission, Washington, D.C. 20423 in the same manner.

Dated at Austin, Texas this 7th day of January, 1974.

JERRY PRESTRIDGE

APPENDIX A

AFFIDAVIT OF ROBERT L. JONES, JR.

STATE OF ARKANSAS §
§
COUNTY OF SEBASTIAN §

My name is Robert L. Jones, Jr. I am fifty-one (51) years of age. I have been actively engaged in the private practice of law in the City of Fort Smith, Arkansas, continuously since September of 1948 (with the exception of 21 months in 1950-52 when I served on active duty in the Judge Advocate General Corps of the United States Army). I am admitted to practice before the Arkansas Supreme Court, the United States District Court for the Western District of Arkansas, the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States. I am local counsel in Fort Smith, Arkansas, for Johnson Motor Lines, Inc., Bowman Transportation, Inc., and Lorch-Westway Corporation, et al, intervening shippers in the case in the United States District Court for the Western District of Arkansas, Fort Smith Division, styled "Arkansas-Best Freight System, Inc., et al vs United States of America and Interstate Commerce Commission, et al, No. FS-72-C-65".

On November 12, 1973, at the request of co-counsel for the named clients, I went to the office of the Clerk of the United States District Court, Western District of Arkansas, Fort Smith Division, for the purpose of conferring with the Clerk concerning matters related to the preparation and transmittal of the record to the Supreme Court of the United States in connection with the appeal from the judgment of this Court entered September 11, 1973, and the order of this Court entered October 4, 1973. The Clerk, Honorable E. A. Riddle, specifically

requested instructions with reference to transmittal of the record of the proceedings before the Interstate Commerce Commission, which he stated was stored in boxes in the basement of the Federal Building (the Clerk's office is on the third and top floor of the building). I accompanied Mr. Riddle to the basement to a store room which was locked and we gained entrance by a key in the possession of Mr. Riddle. Mr. Riddle pointed out to me four (4) boxes, size approximately two and a half feet in height by two and a half feet in width and two feet in depth, which had been stamped filed on May 23, 1973 on the outside of the boxes by Mr. Riddle's office. Mr. Riddle informed me that the boxes containing the record of the proceedings before the Interstate Commerce Commission, upon receipt by his office, were stored in this store room and to his knowledge had been in the store room continuously since receipt. A more detailed inspection of the boxes revealed that three out of the four large boxes had been opened and each large box contained two or more smaller boxes. These smaller boxes did not appear to have been opened. I instructed Mr. Riddle to have the four larger boxes with content undisturbed crated into one large container and shipped to the Clerk of the Supreme Court of the United States.

Further affiiant sayeth not.

ROBERT L. JONES, JR.
Robert L. Jones, Jr.

Subscribed and sworn to before me, this 16th day of November, 1973.

MARY E. BURROWS
Notary Public

My Commission Expires:
April 26, 1977.

(SEAL)

APPENDIX B

No. MC-1124 (Sub-No. 206)

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION-
DALLAS, TEXAS
(Charlotte, N. C.)

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION-
ATLANTA, GEORGIA
(Springdale, Arkansas)

Upon consideration of the consolidated record in the above-entitled proceedings, and of:

(1) Joint petition of East Texas Motor Freight Lines, Inc., Mercury Freight Lines, Inc., Roadway Express, Inc., and Roadway Express, Inc., of Miss., protestants, filed September 20, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance;

(2) Joint petition of Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, Gordons Transports, Inc., and Red Line Transfer & Storage Company, Inc., protestants filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance;

(3) Joint petition of Transcom Lines, T.I.M.E.-DC, Inc., Consolidated Freightways, Yellow Freight System, Inc., and Holloway Motor Express, Inc.,

protestants, filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance;

(4) Petition of applicant in No. MC-76177 (Sub-No. 304), filed September 21, 1972, for a determination and announcement that the proceedings involve an issue of general transportation importance;

and good cause appearing therefor:

It is ordered, That the pleadings to the extent they relate to No. MC-111231 (Sub-No. 67), be, and they are hereby, rejected, as inappropriate.

It is further ordered, That the petitions in all other respects be, and they are hereby, denied, for the reason that, in the judgment of the Commission, no issue of general transportation importance is involved.

By the Commission.

ROBERT L. OSWALD,
Secretary.

(SEAL)

LIBRARY
SUPREME COURT, U. S

No. 73-1071

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

LORCH-WESTWAY CORPORATION, *et al.*,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS-
FORT SMITH DIVISION

JURISDICTIONAL STATEMENT

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Attorneys for Appellants
Lorch-Westway Corporation, et al.

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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STAFF OF SENATE COMM. ON THE JUDICIARY, 93d CONG., 1st SESS., JUDICIAL REVIEW OF DECISIONS OF THE INTERSTATE COMMERCE COMMISSION (Comm. Print 1973) 11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No.

LORCH-WESTWAY CORPORATION, *et al.*,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS–
FORT SMITH DIVISION

JURISDICTIONAL STATEMENT

Appellants Lorch-Westway Corporation, et al.,[1] forty-one shippers (Shippers) supporting the application and certificate of Johnson Motor Lines, Inc. (Johnson), also

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[1] Lorch-Westway Corporation; Simmons Co., Southern Division; Dunham-Bush, Inc.; Leff Brothers Dry Goods Co.; Seneca Textile Corp.; Morgan and Lindsey, Inc.; Western Textile Products Co.; Metal Trims, Inc.; Ero, Inc.; Capitol Bolt and Screw Co.; Olinkraft, Inc.; Jantzen Southern, Inc.; S. Klein (Division of McCrory Corp.); Monroe Wholesale Drug Co.; Ethyl Corp.; Hanna Barber & Beauty Supply Co.; Stayon Products, Inc.; American Greetings Corp.; Canteen Corp.; Campus Sweater and Sportswear Co.; Walgreen Co.; M. Lowenstein & Sons, Inc.; McNeil Laboratories, Inc.; Congoleum Nairn, Inc.; Her Majesty Underwear Co.; Avco-Bay State Abrasive

an Appellant, appeal from an Order and Judgment, dated September 11, 1973, and an Order and Opinion, dated October 4, 1973, of the Three-Judge District Court sitting in the United States District Court for the Western District of Arkansas–Fort Smith Division, 364 F. Supp. 1239. These orders reversed a decision of Division 1 of the Interstate Commerce Commission (Commission), which granted certificates of public convenience and necessity to Johnson, Red Ball Motor Freight, Inc. (Red Ball), and Bowman Transportation, Inc. (Bowman).

The Court has jurisdiction of this appeal. Substantial and novel questions requiring this Court's exercise of its "general power to supervise the administration of justice in the federal courts" are presented with respect to Three-Judge District Courts and warrant the filing of briefs and oral argument in this case. *United States v. National City Lines, Inc.*, 334 U.S. 573, 589; *accord, Western Pacific R.R. Corp. v. Western Pacific R.R.*, 345 U.S. 247, 260.

Products Co.; Tupperwear Co.; Lois Hand, Inc.; Carol Wire & Cable Corp.; Foxboro Co.; Dapol Plastics, Inc. and Worcester Toy Co., Inc.; Berkshire Hathaway, Inc.; Pennsylvania Dutch Co.; Shiny Brite Div. of Poloron Co. (formerly Max Eckardt & Sons, Inc.); Magla Products, Inc.; KSM Division of Omark Industries, Inc.; Warner-Chilcott Laboratories (Division of Warner-Lambert Co.); Monroe International, Inc. (Division of Litton Industries); Becton, Dickinson & Co.; American Cyanamid Co.; and Mississippi Bedding Co.

OPINIONS BELOW

The Orders, Judgment, and Opinion of the Three-Judge District Court are reported at 364 F. Supp. 1239 and also are contained in Appellants' Joint Appendix (J.A. J and N). The Report of Division 1, acting for the Commission, is reported at 114 M.C.C. 571 (J.A. B).

JURISDICTION

Appellees' complaint sought to annul, set aside, and enjoin the Commission's Order entered December 30, 1971, *Herrin Transportation Company Extension—Atlanta, Georgia*, No. MC-1124 (Sub-No. 206), 114 M.C.C. 571 (J.A. B). The suit was brought under 28 U.S.C. §§1336, 2284, 2321-2325; 49 U.S.C. §§305(g) and (h); and 5 U.S.C. §706. The Orders of the Three-Judge District Court were entered September 11 and October 4, 1973. 364 F. Supp. 1239 (J.A. J and N). Notice of appeal was filed by Shippers November 5, 1973 (J.A. P). This Court has jurisdiction to review the decision below on direct appeal under 28 U.S.C. §§1253, 2101. *American Trucking Ass'ns, Inc. v. United States*, 364 U.S. 1, 5.

STATUTES INVOLVED

The National Transportation Policy, 49 U.S.C. preceding §1 note; 49 U.S.C. §§17(4) and (5), 307(a) and (b); 5 U.S.C. §§556, 557, and 706; and 28 U.S.C. §2284(1) and (5) are set forth in J.A. A.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether a Three-Judge District Court constituted

under 28 U.S.C. §2284, in reversing the expert decision of the Interstate Commerce Commission, abdicated its judicial function by mechanically adopting verbatim the proposed findings and conclusions of one set of parties even when many of those proposed findings and conclusions contain egregious errors of fact and law.

2. Whether the Three-Judge District Court improperly adopted a novel and unwarranted concept of *de novo* review of Commission decisions and changed the statutory relationship between hearing examiners and their agency with respect to recommended and final decisions.

STATEMENT

This appeal seeks reversal of two Orders under which the Three-Judge District Court set aside the Commission's grant of three certificates of public convenience and necessity. The Court mechanically adopted verbatim proposed findings and conclusions of Appellees, who were Plaintiffs in the action before that Court. In the administrative proceeding, Appellees unsuccessfully opposed the Commission grant of these certificates to three Appellants after an administrative proceeding of over seven and a half years, nearly 24,000 pages of testimony, and approximately 2,000 exhibits. The Court also denied a Commission motion to remand the case to the agency.

Reversal is sought on the grounds that, in an administrative proceeding which peculiarly called for the exercise of an expert opinion by the agency statutorily charged with that responsibility, the Court failed to exercise its judicial function of limited review under well established Supreme Court precedent. Instead, without that appearance and form of impartiality which the judicial process requires, the Court mechanically adopted

verbatim the proposed findings and conclusions of Appellees. Thereby, the Court failed to review the record upon which the agency acted, adopted a novel rule of *de novo* review by a Three-Judge District Court, refused to be bound by the substantial evidence rule embodied in the Administrative Procedure Act, and erroneously construed the relationship of hearing examiners and the agency involved. Such abdication of the judicial function by a Three-Judge District Court imperatively calls for the exercise of this Court's responsibility for the proper administration of justice by inferior Federal Courts.

Commenced on December 7, 1964, the administrative proceeding involved applications initially by twenty motor carriers. All sought to conduct general commodities operations between points in the Southwest and Southeast. Ten of these applications were consolidated in one proceeding, in which the administrative record in this case was made. Hearings were held between March, 1966 and August, 1967. Nine hundred and fifty witnesses, including Shippers, testified on behalf of the ten applicants. Sixty protestants opposed the applications. The record was "perhaps the most extensive . . . ever developed in connection with a single group of motor carrier application proceedings before [the] . . . Commission." 114 M.C.C. at 573 (J.A. B, p. 103).

Two hearing examiners on November 19, 1969, issued a recommended report and order (Report). Although finding each of the applicants "capable of performing the operations proposed" (Report, p. 3), every application was denied (*Id.*, p. 32).

Exceptions were filed by eight applicants, including Red Ball, Bowman, and Johnson. Shippers, who were permitted leave to intervene by the Commission, also filed exceptions.

The hearing examiners, in rejecting every application, used an atomized treatment of the evidence, with specific findings of fact for about 45 separate commodities. In its final decision, the Commission, by Division 1,[2] rejected a commodity-by-commodity analysis of the evidence and the examiners' approach that "either all [applications] must be granted or all must be denied." 114 M.C.C. at 574 (J.A. B, p. 104). Instead, the Commission found that "a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by the grouping of the supporting evidence on a geographic basis." 114 M.C.C. at 591 (J.A. B, p. 121).[3] These "supporting witnesses" included Shippers.

The Commission found that "[t]he evidence considered in its entirety is convincing that the additional services [proposed by Red Ball, Bowman and Johnson] . . . will serve a useful purpose, responsive to a public demand and need." 114 M.C.C. at 599 (J.A. B, p. 129). According to the Commission, "supporting witnesses have shown a valid public need for additional motor carrier service [by three applicants]" in view of existing "carrier restrictions or embargoes," "outright refusals by existing carriers to handle their traffic," "pickup and delivery problems," "interline difficulties relating to loss, damage, tracing, shortages, and misrouting," and "lost business and accounts". 114 M.C.C. at 600 (J.A. B, p. 130).

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[2] See 49 U.S.C. §17(1).

[3] The "supporting evidence" accordingly was restated by the Commission in Appendix E to its decision, 114 M.C.C. at 636-756 (J.A. B, pp. 182-318), supplanting Appendix C to the hearing examiners' report.

Petitions for reconsideration and other pleadings were filed by protestants and unsuccessful applicants. By order dated September 6, 1972, the Commission, by Division 1, acting as an Appellate Division, denied or rejected all the petitions relevant to this case. Petitions seeking a declaration by the Commission that the proceeding involved an issue of General Transportation Importance were denied by Order dated October 6, 1972.

The complaint was filed on October 4, 1972, by sixteen Plaintiffs, later joined by three other intervening Plaintiffs. After oral argument on November 1, 1972 (J.A. D), on November 7, 1972, the presiding Senior District Judge entered a temporary restraining order against the Commission decision. *Arkansas-Best Freight System, Inc. v. United States*, 350 F. Supp. 539. Without any substantiation therefor in the body of its opinion, the Court found that "[t]he plaintiffs have established that they are likely to prevail on the merits." 350 F. Supp. at 545. The other two members of the panel did not hear oral argument or participate in this decision.

Upon Appellees' motion filed June 25, 1973, the Court on June 26, 1973, granted them until July 16, 1973, to reply to the Appellants' briefs theretofore filed with the Court. On June 29, 1973, Appellees filed a supplemental complaint, seeking to add Jones Truck Lines, Inc. as an additional defendant and to have reviewed a Commission decision with respect thereto, 117 M.C.C. 586 (Dec. 6, 1972). This matter was argued before the three members of the Court on July 24, 1973 (J.A. E).

During argument on the proposed supplemental complaint, the Senior District Judge stated that

> ". . . [W]e [the entire Court] feel like the case has been thoroughly argued . . . in November [1972, J.A. D] where the court [consisting solely of this Judge] heard that motion for a T.R.O. . . ." (Tr. 113) (J.A. E, p. 567).

Another member of the panel rejected "the big session [on the merits] a couple of weeks from now that I have heard so much about . . . . I will tell you right now, there is no such thing . . . going to occur." (Tr. 4) (J.A. E, p. 458). After Appellants then agreed to forego a full-dress hearing on the merits (Tr. 113-114) (J.A. E, pp. 567-568), the Senior District Judge commented that, with respect to the filing of briefs and a disposition of the case on the merits, "there has always got to be window-dressing" (Tr. 128) (J.A. E, p. 582).

Appellees jointly, the Commission, Bowman, and Johnson, Red Ball, and Shippers jointly, submitted proposed findings of fact and conclusions of law by August 16, 1973 (J.A. F, G, H, and I). Twenty-six days later the Court filed its decision (J.A. J), copying in almost its entirety Appellees' submission (J.A. I).[4] The decision contained no specific references to the agency record but solely to portions of Appellees' proposed findings.[5] The Court acknowledged its "duty to review the whole record" (J.A. J, p. 775; 364 F. Supp. at 1258). Nowhere does the Court state that it reviewed or even took cognizance of the entire record,[6] which remained

[4] Introductory remarks at pages 1-7 of the decision (J.A. J, pp. 742-748; 364 F. Supp. at 1242-1245) contain some departures from Appellees' proposed findings (J.A. I, pp. 697-702). The Court's substantive findings and conclusions (J.A. J, pp. 748-788; 364 F. Supp. at 1245-1264) are adopted verbatim from Appellees' text (J.A. I, pp. 703-738).

[5] *E.g.*, J.A. J, pp. 767, 769; 364 F. Supp. at 1254, 1255.

[6] "Extensive and thorough briefs have been submitted to the court . . . and proposed findings of fact and conclusions of law . . . received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report." (J.A. J, p. 748; 364 F. Supp. at 1245). "After full consideration of the contentions of all the parties, the pertinent portions of the entire record and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the Court [in *toto*] as hereinafter set forth." (*Id.*).

unopened in the boxes in which it was shipped to the Clerk of the Court.[7]

The Court, in effect, adopted the findings and conclusions of the hearing examiners, based upon a denial of ten applications. It held that these findings and conclusions with respect to ten applications did not support the Commission's grant of certificates to only three applicants. The Court refused to remand the case to the Commission for the reason that "because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served" thereby (J.A. J, pp. 787-788; 364 F. Supp. at 1264).

The Commission on September 17, 1973, moved the Court to amend its judgment by remanding the case to the Commission for further proceedings consistent with the judgment (J.A. K). The Court denied the motion on October 4, 1973 (J.A. N; 364 F. Supp. at 1266-1272).

THE QUESTIONS OF JUDICIAL ADMINISTRATION AND APPELLATE REVIEW HERE PRESENTED ARE SUBSTANTIAL.

This appeal presents substantial questions affecting the judicial review of Commission decisions and the statutory relationship between a hearing examiner and the administrative agency in which he serves.

The Three-Judge Court paid lip service to precedent established by this Court. It then proceeded to apply a broad and novel scope of review to the Commission's decision. By this process, the Court substituted its own

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[7]See Jones Affidavit, November 16, 1973, App. A, Bowman Jurisdictional Statement.

judgment and that of the hearing examiners for the expert opinion of the Commission, charged by statute with final administrative authority in the motor carrier field.

This result was dictated by the Court's mechanical and verbatim adoption of Appellees' proposed findings and conclusions. The Court's decision, whether or not intended, is not the product of disinterested judicial minds which is the necessary hallmark of Court review. Indeed, the Court condemned its procedure by its own words. An appellate Court "'must review the record without a rubber stamp approach'" (J.A. J, p. 785; 364 F. Supp. at 1263). Its decision "sounds more in advocacy than in impartial adjudication" (J.A. J, p. 787; 364 F. Supp. at 1264).

The issue of the verbatim adoption, by a Three-Judge District Court, of proposed findings and conclusions of one party never has been presented squarely for decision by the Supreme Court. This Court's exercise of its supervisory authority over the Federal judicial system now is required in order that procedure before Three-Judge District Courts reviewing I.C.C. decisions may be clarified and fixed without question.

A. Verbatim Adoption of Appellees' Findings and Conclusions

The key to the errors committed by the Three-Judge District Court is its mechanical and verbatim adoption of Appellees' proposed findings and conclusions. 28 U.S.C. §2325, the descendant of the Urgent Deficiencies Act, provides:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part of any order of the Interstate Commerce Commission shall not be granted unless

> the application therefor is *heard and determined by a district court of three judges* under section 2284 of this title." (emphasis added).

Assuming, *arguendo*, all three Judges "fully perform[ed] the judicial function" required by that statute at the oral argument held July 24, 1973, *Ayrshire Collieries Corp. v. United States*, 331 U.S. 132, 138, they did not "determine" the issues involved when they rubber-stamped Appellees' filings. The guidelines laid down by this Court in *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, were not followed:

> "* * * Those [District Court] findings, though not the product of the workings of the district judge's mind, are formally his. . . . Those drawn with the insight of a disinterested mind are, however, more helpful to the appellate court. * * * Moreover, these detailed findings were 'mechanically adopted' . . . and do not reveal the discerning line for decision of the basic issue in the case. * * *" 376 U.S. at 656-657.

Here, the District Court did not even "pick and choose and temper and select those portions [of findings and conclusions proposed by all parties] which better fit its own concept of the case." *Bradley v. Maryland Casualty Co.* 382 F.2d 415, 423-424 (8th Cir. 1967). Indeed, the review provided in this case hardly comports with the kind of review envisioned by Congress under 28 U.S.C. §2325.[8]

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[8] The procedure followed by the Court below has been condemned by the other Circuits. The continuation of Three-Judge District Court review of Commission decisions also has been questioned. Burger, C.J., *Report on the Federal Judicial Branch*, 94 S.Ct. 3, 5 (1973); Staff of Senate Comm. on the Judiciary, 93d Cong., 1st Sess., Judicial Review of Decisions of the Interstate Commerce Commission 2-3 (Comm. Print 1973) ("The Burden of Three-Judge Courts"); see *Swift & Co., Inc. v. Wickham*, 382 U.S.

Verbatim adoption of one party's findings and conclusions does not adequately manifest an independent and uncritical exercise of judicial discretion. *In Re Las Colinas, Inc.*, 426 F.2d 1005, 1010 (1st Cir. 1970), *cert. denied*, 405 U.S. 1067; *United States v. Forness*, 125 F.2d 928, 942 (2d Cir. 1942), *cert. denied*, 316 U.S. 694. The practice does not "guarantee that each word is impartially chosen." *Louis Dreyfus & Cie. v. Panama Canal Co.*, 298 F.2d 733, 738 (5th Cir. 1962); *In Re Las Colinas, Inc., supra*, Uncritical adoption by the Court of the findings and conclusions of the prevailing party fails to indicate the basis of decision, and thereby "flies in the face of the spirit and purpose" of F.R. Civ. P. 52(a). *Roberts v. Ross*, 344 F.2d 747, 751 (3d Cir. 1965); *Featherstone v. Barash*, 345 F.2d 246, 251 (10th Cir. 1965). The fundamental reason for this condemnation is that the functions of an ardent advocate and an impartial judge are essentially inconsistent. *Industrial Building Materials, Inc. v. Interchemical Corp.*, 437 F.2d 1336, 1340 fn.3 (9th Cir. 1970).

For purposes of review, "maximum doubt" is cast upon findings of fact and conclusions of law which are mechanically and uncritically adopted by the Court below. *In Re Las Colinas, Inc., supra* at 1010. When the proposed findings of fact and conclusions of law, mechanically adopted, constitute all the essential elements of the Court's opinion, the victorious counsel has effectively prepared that opinion. This involves the "failure of the trial judge to perform his judicial function," and mandates reversal. *Chicopee Manufacturing Corp. v. Kendall Co.*, 288 F.2d 719, 724-725 (4th Cir. 1961), *cert. denied*, 368 U.S. 825.

111, 128-129; *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 92-93 (dissent by Frankfurter, J.); *Phillips v. United States*, 312 U.S. 246, 250.

The District Court's mechanical adoption of Appellees' proposed findings resulted in findings which were "clearly erroneous" under F.R. Civ. P. 52(a). More important, by its mechanization of the judicial review process, the Court below departed from established precedent for the limited scope of review of Commission decisions, contrary to the overwhelming weight of authority in other Three-Judge Court decisions. If this Court does not take jurisdiction and set the matter to rights, the decision below will become precedent for a departure from the rule of law in such cases.

B. Failure to Review Record

The District Court's failure to discharge its judicial duties is exemplified by its adoption of erroneous findings of fact proposed by Appellees. These findings obviously were adopted without the Court itself checking the record as a whole. Some more egregious examples of this error follow.

Shippers' Exceptions. The Court found that "shippers' contentions were more political than judicial" (J.A. J, p. 769; 364 F. Supp. at 1255), and the agency "should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues" (J.A. J, p. 786; 364 F. Supp. at 1263).

The initial exceptions filed by Shippers March 24, 1970, related to the examiners' findings concerning antitrust matters and their rejection of the public's needs for improved and expanded service.[9] Supplementary excep-

[9] See Appendix A attached, the table of contents of those initial exceptions.

tions filed August 20, 1971, updated the initial filing[10] but were never accepted for the record by the Commission. 114 M.C.C. at 577 (J.A.B, p. 107).

That "competition is our fundamental national economic policy," *United States v. Philadelphia National Bank*, 374 U.S. 321, 372, is not a political issue. Exceptions based upon specific findings and conclusions of the examiners hardly involve "new" issues.

Exceptions to Examiners' Report. The Court accepted Appellees' claim that, "applicants [Appellants] had not challenged any specific findings of the Examiners . . ." (J.A. J, p. 758; 364 F. Supp. at 1250). Appellant trucking companies did except to certain of the examiners' findings, as well as to their conclusions.[11] Shippers excepted to major conclusions of the examiners which embodied subordinate findings of fact. For example, the examiners held that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier

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[10] See Appendix B attached, the table of contents of those proposed exceptions.

[11] *Johnson (Mar. 24, 1970)*: Conclusion and subsidiary findings that its application should be treated as part of 10 applications and not separately (pp. 4-14); conclusion and subsidiary findings that no public need existed for Johnson proposed service (pp. 14-49).

Bowman (Mar. 10, 1970): Conclusion and subsidiary findings in "considering all 10 applications collectively" (pp. 13-17); error in "basing . . . Recommended Report on broad generalities without specific findings as to the basic facts of record" (pp. 18-23).

Red Ball (Mar. 10, 1970): Conclusion and subsidiary findings that "933 public witnesses failed to establish a need for additional carrier service" (pp. 7-13); conclusion and subsidiary findings that "a grant of the Red Ball application will have an adverse affect on existing carrier services" (pp. 13-16); "treating these applications as 'all or nothing at all' " (pp. 16-50).

(J.A. J, pp. 757-758; 364 F. Supp. at 1249-1250). The Court, in effect, affirmed this finding, which is squarely contrary to *United States v. Dixie Highway Express, Inc.*, 389 U.S. 409, 411.

Transit Studies. The Court stated that the Commission "acted *ex mero motu*" in finding that Appellees' transit time studies "were entitled to little weight," thereby "depriving . . . [them] of any opportunity to defend their propriety or correct the alleged deficiencies" (J.A. J, p. 762; 364 F. Supp. at 1252).[12] Had the Court checked the record, it would have found that Appellant Johnson challenged Appellees' studies in its March 24, 1970 exceptions (pp. 25-27) and in its reply dated August 16, 1972, to Appellees' petitions for reconsideration of the Commission's decision. The Commission did not act on its own motion. In addition, the Court criticized the Commission for subjecting the Appellees to a "changed standard with regard to transit time studies, which they were given no opportunity to meet" (J.A. J, p. 769; 364 F. Supp. at 1260). However, the "standard" applied by the Commission had been set about two months prior to the hearings in this proceeding. *Braswell Freight Lines, Inc. Extension-Atlanta,* 100 M.C.C. 482, 493-494 (Jan. 17, 1966). The parties had sufficient opportunity to meet it. Similarly, the Court rebuked the Commission for its alleged failure to consider recently-issued single-line authorities as a part of the total competitive situation (J.A. J, pp. 766-767; 364 F. Supp. at 1253-1254). But the Commission's report expressly discussed those authorities and took them into account in deciding whether, and to what extent, the public convenience and necessity required authorization of still more service (114 M.C.C. at 576; J.A. B, p. 106).

[12]This is the same as Appellees' proposed finding (J.A. I, p. 715).

Inadequate Service. The Court conceded that "[m]ost shippers generally expressed dissatisfaction with inconsistent and excessive transit time" and "expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points. . . ." (J.A. J, p. 750; 364 F. Supp. at 1245-1246). These facts alone established a rational basis for the Commission's finding of inadequate service. The Court, however, chose to ignore the Commission's, and its own, findings and to copy the proposed findings submitted by Appellees (J.A. I, p. 704). Further, the Court held that the Commission erred in failing to find that Appellant trucking companies were guilty of the same deficiencies in service as those found to have been produced by Appellees (J.A. J, p. 780; 364 F. Supp. at 1261).[13] Had the Court reviewed the Commission's decision, instead of copying Appellees' proposed finding, it would have found that (1) specific complaints against Johnson were *de minimis,* involving nine criticisms by shippers in Georgia and Louisiana;[14] and (2) findings by the examiners themselves supported the Commission's conclusions as to existing inadequate service.[15]

C. Novel Concept of De Novo Judicial Review.

Plaintiffs' proposed findings stated, and the District Court ruled, that, despite the substantial evidence rule

[13]This is Appellees' proposed finding (J.A. I, p. 730).

[14]Exhibits to Brief of Lorch-Westway Corporation, *et al.*, May 1, 1973 (pp. 190-191), Doc. No. 4, Index to Briefs, Certificate of District Court Clerk dated Nov. 15, 1973, transmitted to this Court the same date. See 114 M.C.C. at 660 (J.A. B, p. 206).

[15]*Id.*, pp. 211-421.

and a rational basis for Appellants' contentions, the Commission's decision was arbitrary and capricious under 5 U.S.C. §706. By its conclusion that the Commission's action was "arbitrary and capricious" (J.A. J, p. 775; 364 F. Supp. at 1259), the District Court misread the decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402.[16] This result defies clear precedent of this Court as applied by the Federal Courts.[17] The proper standard of judicial review for an adjudicatory administrative decision is whether that decision is supported by substantial evidence upon the record as a whole. In making such a review, the Court cannot substitute its own view for the Commission's expert judgment when the latter is warranted by support in the record. *Illinois Cent. R.R. v. Norfolk & W. Ry.*, 385 U.S. 57, 66; *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620-621; *Mississippi Valley Barge Line Co. v. United States*, 292 U.S. 282, 286-287; *United States v. Pierce Auto Freight Lines, Inc.*,

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[16]Apart from the misconstruction of *Overton Park*, the sole authority cited for this proposition is *Columbia Shippers & Receivers Ass'n, Inc. v. United States*, 301 F. Supp. 310, 319 (D. Del. 1969). The decision there on this point was unprecedented and has not since been cited, except for its contrast to established law. *See, Metropolitan Shipping Agents of Ill., Inc. v. United States*, 342 F. Supp. 1266, 1268 (D. N.J. 1972).

[17]*United Trucking Service, Inc. v. United States*, 359 F. Supp. 100, 104 (E.D. Mich. 1973); *Twin City Freight, Inc. v. United States*, 360 F. Supp. 709, 712 (D. Minn. 1972); *Garrett Freightlines, Inc. v. United States*, 353 F. Supp. 1329, 1333 (W.D. Wash. 1973); *James Hughes, Inc. v. United States*, 292 F. Supp. 372, 373 (S.D.N.Y. 1968); *United Van Lines, Inc. v. United States*, 266 F. Supp. 586, 588-589 (E.D. Mo. 1967); *Continental Southern Lines, Inc. v. United States*, 265 F. Supp. 218, 221 (W.D. La. 1967); *Dance Freight Lines, Inc. v. United States*, 149 F. Supp. 367, 373 (E.D. Ky. 1957; *Allied Van Lines Co. v. United States*, 303 F. Supp. 742, 746 (C.D. Cal. 1969).

327 U.S. 515, 536; *ICC v. City of Jersey City*, 322 U.S. 503, 512-513. While the District Court paid lip service to this test in its opinion (J.A. J, pp. 771-772; 364 F. Supp. at 1256-1257), it insisted upon following Appellees' proposal, verbatim, that *Overton Park* mandated looking beyond the "substantial evidence" test to whether there was arbitrary and capricious action or abuse of discretion on the part of the Commission (J.A. J, p. 773; 364 F. Supp. at 1258-1259).

Relying as it did upon Appellees' proposed conclusions of law, the Court disregarded this Court's limitation of the *de novo* review provided in *Overton Park* to situations where the administrative hearing was "nonadjudicatory, quasi-legislative in nature [,] . . . not designed to produce a record that is to be the basis of agency action—the basic requirement for substantial-evidence review." This type of review does not apply "when the agency action is based on a public adjudicatory hearing." 401 U.S. at 414-415.

Here the Three-Judge District Court impermissibly rejected the application of the substantial evidence rule to a hearing on the record. Such judicial error, because of its possible applicability to other cases involving the review of Commission decisions, involves one of those unique situations contemplated in *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 490-491, where jurisdiction should be taken by this Court.

D. Misconception of Relationship Between Agency and Hearing Examiner.

The Three Judge District Court accorded overwhelming weight to the examiners' report, to override the Commission's decision. (J.A. J, p. 756; 364 F. Supp. at 1250). Such a result contradicts 5 U.S.C. §557(b) which

provides that in such circumstances the "agency shall have all the powers which it would have in making the initial decision." See 2 K. Davis, Administrative Law Treatise §10.04 (1958). "The Commission is not bound by the examiner's conclusions. Rather the Commission is free to make its own independent determinations," *Frozen Food Express, Inc. v. United States*, 301 F. Supp. 1322, 1324 (N.D. Tex. 1969); see also *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 493; *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 364-365.

While a reviewing Court must look to the examiner's report as part of the whole record, such a report remains only a part of the record. It cannot be used, as here, as a method of negating the Commission's decision. The Court held that the conclusions of the examiners, based upon findings of fact to which specific exceptions allegedly were not taken, were nonreviewable by the Commission and even by the Court. That exceptions were taken to the examiners' conclusions and that the Commission reached different conclusions were disregarded by the Court.

Under this novel theory of law, the role of hearing examiners has been exalted to that of final decision, even where, as here, the agency with statutory responsibility in the motor carrier field reaches contrary conclusions. The result of the Court's action is to defeat the letter and the spirit of the Administrative Procedure Act and the Interstate Commerce Act.

CONCLUSION

Probable jurisdiction should be noted. Abdication of the judicial function and usurpation of the Commission's function require that the Three-Judge District Court decision be reversed, and the decision of the Commission affirmed.

Respectfully submitted,

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Attorneys for Appellants Lorch-Westway Corporation, et al.

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

APPENDIX A

EXCEPTIONS OF INTERVENING SHIPPERS

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. [redacted]

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET. AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the district court (J. App. J and N) [1] are reported at 364 F. Supp. 1239. The report of the Interstate Commerce Commission (J. App. B) is reported at 114 M.C.C. 571. The final order of the Commission (J. App. C) is not reported.

[1] "J. App." refers to the Joint Appendix to Jurisdictional Statements filed by the other appellants.

JURISDICTION

This action was brought under 28 U.S.C. 1336, 1398, 2284, and 2321–2325, to set aside orders of the Interstate Commerce Commission. The judgment of the three-judge district court (J. App. J) was entered on September 11, 1973. An order (J. App. N) overruling and denying a motion of the United States and the Commission to amend the judgment was entered on October 4, 1973. Notice of appeal by the United States and the Commission (J. App. Q) was filed on November 9, 1973. The jurisdiction of this Court to review the judgment of the district court on direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). *United States* v. *Dixie Highway Express, Inc.*, 389 U.S. 409; *Illinois Central Railroad Co.* v. *Norfolk & Western Railway Co.*, 385 U.S. 57; *United States* v. *Saskatchewan Minerals*, 385 U.S. 94.

QUESTIONS PRESENTED

1. Whether the district court's reversal of an Interstate Commerce Commission decision finding that certain additional motor carrier service is required by the public convenience and necessity was based upon improper standards of judicial review.

2. Whether the district court's refusal to remand the case to the Commission improperly precluded the Commission from further consideration of the substantive merits of the issues of public convenience and necessity.

STATUTE INVOLVED

Section 207(a) of the Motor Carrier Act, 49 U.S.C. 307(a), provides:

> Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied; *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

STATEMENT

In 1964 and 1965, sixteen motor carriers filed a total of twenty applications generally seeking to extend their regular route general commodity operating authorities between points in the Southeast and Southwest in order to meet the burgeoning transportation needs of the two regions' mutually dependent economies.[2] Following a prehearing conference, early in

[2] Generally, the points lie west of Atlanta, Ga., Birmingham, Ala., and Pensacola, Fla., and east of Houston, Dallas and Fort Worth, Tex., and include each of those cities. The approximate

1966, the Commission ordered ten of the applications to be heard on a consolidated record. A total of 66 competing rail and motor carriers appeared in opposition.[3]

Hearings, at which more than 900 shippers and receivers of freight testified in support of the applications, were conducted on 149 days over a period from March 1966 to August 1967. The consolidated record became "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission" (J. App. B, p. 103). In their recommended report and order (a copy of which is included in the record which has been transmitted to this Court), two hearing examiners found that the applicants were "capable of performing the operations proposed" but concluded that each application should be denied.

The Commission, however, disagreed and, after an intensive analysis and comparison of the evidence in support of and in opposition to the applications, concluded that three of the applications should be granted. Noting (J. App. B, p. 121) that the examiners' findings with respect to shipper testimony induced an unclear picture of available service, the Commission revised those findings to reflect its different evaluation of the evidence. Other sections of the recommended report, in-

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northern boundary is a line between Topeka, Kans., and Kansas City, Mo.

[3] Each of the applicants was also a protestant to another application.

volving other issues, were specifically adopted by the Commission (J. App. B, p. 105).

The Commission found that "[t]he evidence considered in its entirety is convincing that the additional services * * * will serve a useful public purpose responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public" (J. App. B, p. 129). It found substantial evidence of general dissatisfaction with existing services because of excessive and inconsistent transit time between the two geographic areas, as well as "restrictions or embargoes which limit the service available * * * outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints" (J. App. B, p. 130). In addition, the Commission found "a rapidly increasing demand * * * for added motor carrier service of a direct, single-line nature," and concluded that "the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson" (J. App. B, p. 132).

The Commission noted that some existing traffic would be subject to possible diversion, but found that

"[w]ith the exception of one carrier * * * protestants have not shown that they would be seriously adversely affected (footnote omitted) by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future" (J. App. B, p. 157).

In the suit to set aside this decision, the district court held the orders invalid insofar as they extended the operating authorities of three carriers, Red Ball, Bowman, and Johnson; it enjoined the Commission from issuing certificates to those carriers in this proceeding. Its opinion (J. App. J) adopted, substantially verbatim, the findings and conclusions proposed by appellees (J. App. I). The court expressly refused to remand the proceedings to the Commission.

Thereafter, the government filed a motion to amend the judgment to provide for a remand of the proceeding to the Commission for further action consistent with the court's opinion. In its second opinion (J. App. N), the court denied that motion, reasoning that the applicants instead "should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts" (J. App. N, p. 816).

THE QUESTIONS ARE SUBSTANTIAL

In setting aside the Commission's decision, the district court unjustifiably departed from established standards of judicial review of administrative action.

The decision reflects a serious misinterpretation of this Court's opinion in *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402, in violation of the established allocation of decision-making functions between reviewing courts and the administrative agencies. The court's refusal to remand the case represents an unwarranted interference with the Commission's responsibility for performance of its statutory functions, and disregards many of this Court's prior decisions.

The case is also important because a denial of these applications may have significant economic impact. This is a case of major importance to all those concerned with the movement of freight originating at, destined to, or passing through the Southeast or Southwest regions of the United States. An economic study showed that at the time the extension applications were filed there already existed "substantial trade and commerce" between the regions involved (J. App. B, p. 122). It was also noted that the population of the regions "has increased substantially between 1960 and 1970" (J. App. B, p. 123). The Commission concluded that existing service was not adequate to meet the demands of these growing areas. The Commission evaluated the transportation needs of the Southwestern and Southeastern United States in this proceeding and concluded that the issuance of these additional motor carriers' certificates is necessary to assure efficient carriage of freight between those regions. The district court's decision denies the public the benefits of that needed transportation service.

1. The district court failed to apply correct standards of judicial review for agency decisions made on the record after hearing. This Court has concluded that, to preserve the decisional responsibility of agencies, the scope of judicial review in such cases is limited. The court's function is to determine whether the agency decision is supported by substantial evidence. *Consolo* v. *Federal Maritime Commission,* 383 U.S. 607, 620; *Illinois Central Railroad Co.* v. *Norfolk & Western Railway Co.,* 385 U.S. 57, 69. If the court finds sufficient evidence in the record as a whole to support the decision, then the reviewing court cannot upset the agency determination merely because it would have drawn different conclusions from the facts presented to the agency. "[I]t was not the District Court's function to substitute its own conclusions for those which the Commission had fairly drawn" (*ibid.*), because "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo, supra,* 383 U.S. at 620.

This standard of judicial review does not permit the reviewing court to determine the relative weight to be given to conflicting evidence. This Court has stressed that the requirement that a reviewing court canvass the entire record "does not furnish a calculus of value by which a reviewing court can assess the evidence." *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 488. The requirement does not negate the agency's fact-finding function and does not permit a court to reject an agency's choice between

two fairly conflicting views even if the court would have made a different choice if the matter had been submitted to it for *de novo* decision. *Ibid.*

The court below ignored these limitations on judicial review. It did not hold that the Commission decision is not supported by substantial evidence.[4] On the contrary, the court acknowledged that the Commission's findings are supported by portions of the record (J. App. J, p. 777). Conclusions 12–21 (J. App. J, pp. 778–784) indicate that the district court vacated the Commission's determination because it thought the Commission should have given greater weight to the contrary evidence presented by the protestants. The weighing of the evidence, however, is for the agency, not the reviewing court.

Indeed, the court below applied a novel standard of judicial review of agency determinations in adjudicatory proceedings. After reciting the substantial evidence test, the court engrafted onto that standard the additional tests of 5 U.S.C. 706(2)(A) that the action of the agency not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." In using these additional tests, the court purported to rely on this Court's decision in *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402. Such reliance is misplaced.

---

[4] The Commission's determination was supported by voluminous evidence. There were 482 supporting witnesses from the Southwest, 340 from the Southeast, 42 from the Midwest and 44 from the Middle Atlantic and New England states (J. App. B, p. 122).

In *Overton Park* this Court discussed the standards of review set out in Section 706 of the Administrative Procedure Act. It noted that while the substantial evidence test applies to adjudicatory proceedings (401 U.S. at 414) the agency action in dispute in *Overton Park* was "* * * not designed to produce a record that is to be the basis of agency action—the basic requirement for substantial-evidence review * * *" (401 U.S. at 415). For that reason, the test did not apply. This Court held the "arbitrary or capricious" standard applicable, but even so "[t]he Court is not empowered to substitute its judgment for that of the agency." 401 U.S. at 416. Although the question was not presented in *Overton Park,* it is clear that, absent questions of the agency's authority which are not involved here, an agency determination in adjudicatory proceedings which is supported by substantial evidence cannot properly be found to be "arbitrary or capricious."

2. The district court also exceeded its proper function in refusing to remand the case to the Commission for further proceedings—including the taking of additional evidence if the agency deems such action warranted. It is well settled that "an administrative determination in which is embedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." *Federal Communications Commission* v. *Pottsville Broadcasting Co.,* 309 U.S. 134, 145. The reviewing court's function "ends when an error of law is laid bare. At that point the matter

once more goes to the Commission for reconsideration." *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20.

This precept fits this case well—for the legislative delegation to decide the issue of public convenience and necessity affords "administrative discretion to the Commission, * * * to draw its conclusion from the infinite variety of circumstances which may occur in specific instances". *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65. Here, the district court found that the Commission erred because it had not given sufficient consideration to certain evidence. This finding, even if correct, should not foreclose further Commission proceedings to determine public convenience and necessity.

The district court's refusal to remand appears to be based primarily upon its conclusion that the present record is too stale to permit a realistic evaluation of present or future public convenience and necessity. But even if true,[5] this is insufficient reason for the reviewing court to require the filing of new applications and the institution of an entirely new proceeding. Rather, the appropriate course would be to remand the case to the agency for a determination of the ap-

[5] This Court has often sustained agency decisions based on records no more current than the one here involved, and indeed has emphasized that the determination whether a record should be reopened for additional evidence is a matter for the discretion of the agency. See, *e.g.*, *Northern Lines Merger Cases*, 396 U.S. 491, 520–522; *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 534–536; *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503.

propriate course of action in light of the court's opinion. If additional evidence is required to bring the record up to date, the Commission should have the discretion to reopen the existing proceeding for the receipt of additional evidence, and not be forced to begin afresh with a new proceeding (in which much of the evidence already of record here would undoubtedly have to be reintroduced). A "judgment which instructs the Commission to grant relief to the appellee and precludes the Commission from reopening the proceedings for the receipt of additional evidence * * * is an improper limitation on the Commission's duty to reconsider the entire case." *United States* v. *Saskatchewan Minerals, supra,* 385 U.S. at 94–95.

The present case is similar to *Arrow Transportation Co.* v. *Cincinnati, N.O. & T.P.R. Co.,* 379 U.S. 642. There, the district court had "set aside and permanently enjoined the operation, enforcement and execution" of a Commission order. This Court summarily set aside the permanent injunction and ordered the matter remanded to the Commission without any restriction upon its power to re-examine the issues. See also *Atchison, Topeka & Santa Fe Railway Co.* v. *Wichita Board of Trade,* 412 U.S. 800; *Federal Trade Commission* v. *Carter Products, Inc.,* 346 U.S. 327. We believe that, at the very least, the same course would be proper here.

CONCLUSION

This appeal presents substantial questions of public importance. Probable jurisdiction should be noted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
THOMAS E. KAUPER,
Assistant Attorney General.
WILLIAM L. PATTON,
Assistant to the Solicitor General.
CARL D. LAWSON,
ROGER B. ANDEWELT,
Attorneys.

FRITZ R. KAHN,
General Counsel,
BETTY JO CHRISTIAN,
Associate General Counsel,
SEYMOUR GLANZER,
Attorney,
Interstate Commerce Commission.

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SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

APPELLEES' MOTION TO DISMISS AND AFFIRM

DON A. SMITH
THOMAS HARPER
P. O. Box 43
Fort Smith, Arkansas 72901

WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105

WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D. C. 20004

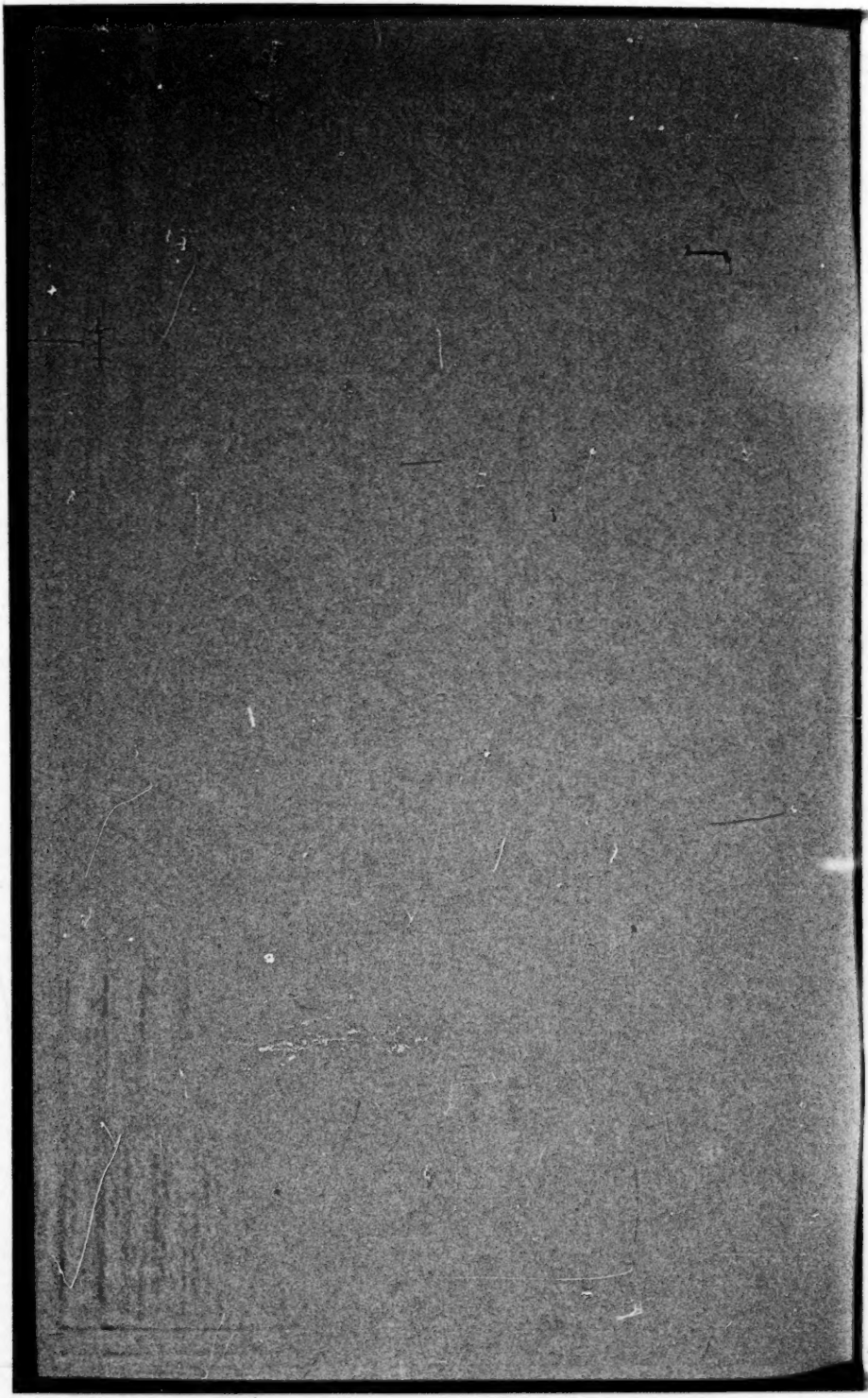
PHINEAS STEVENS
P. O. Box 22567
Jackson, Mississippi 39205

PHILLIP ROBINSON
P. O. Box 2207
Austin, Texas 78767

M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees

R. L. MENDENHALL, INC., 906 Cherry Street, Kansas City, Mo. 64106, 421-2000



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In the Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

APPELLEES' MOTION TO DISMISS AND AFFIRM

Appellees[1] in the above-entitled cases move to dismiss Case No. 73-1069 (Johnson Motor Lines, Inc., appellant) on the ground that the appeal has not been taken in time and to affirm all such cases on the ground that the questions presented are so unsubstantial as not to need further argument.

1. Arkansas-Best Freight System, Inc., Mercury Motors, Incorporated, Alamo Express, Inc., Braswell Motor Freight Line, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc. and Jack Cole-Dixie Highway Company.

years. During this period, a massive expansion of carrier operations took place, with Commission approval.[3] Initially, there were 21 applications that sought major expansions of operating authority within the southeastern and southwestern portions of the United States. Ten, including the three here involved, were selected for hearing on a consolidated record before two of the Commission's most experienced hearing examiners (App. J 748).[4]

The Jurisdictional Statements outline the dates involved and the massive size of the record resulting from the consolidation of the ten applications. The examiners accurately summarized the voluminous evidence,[5] finding that there was no public need for the services proposed and that approval of any of the applications would result in a serious deterioration of existing service, contrary to the public interest. Their conclusions were predicated, in part, upon the fact that *none of the applicants proposed to supply service to any point or operate over any route that was not already adequately served by multiple carriers.* Instead, each proposed only to render a highly selective form of "overhead" operation, restricting their service to selected major cities. The examiners found that the carriers adequately serving the areas were dependent

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3. At the time of the hearing, three carriers provided direct service between Atlanta and Dallas, focal points of the proceeding. At the time of the Commission's decision there were 13 such carriers. Similar expansions occurred without exception at every city involved (App. J 766). The court below was furnished with a detailed analysis from the record demonstrating the specific increases that occurred at 14 of the principal cities involved. Plaintiffs' Brief (District Court), pp. 142-145. ("App." refers to the Joint Appendix to Jurisdictional Statements filed by appellants.)

4. Now termed "Administrative Law Judges." For consistency, the title "examiners," used in the record, will be utilized here.

5. No party has ever challenged the accuracy of the examiners' summary of the evidence as set forth in their 300-page report (App. J 751, 758).

on volume traffic at the larger cities (that would be served by applicants) in order for them to maintain service to the smaller communities (that would not be served by applicants). They recognized that if any of the applicants were permitted to superimpose its proposed service on that presently provided, it would result in forcing existing carriers to increase the amount of their empty vehicle operations within the area. For example, one appellee (Roadway) was then operating at least one empty truck per day from Texas to the East Coast, due to traffic imbalance, while another (Gordons) was operating empty vehicles more than one million miles per year[6]—highly "inefficient and wasteful" conditions that would be worsened by approval of any of the applications (*id.*, at 756, 768).[7]

Most of the unsuccessful applicants filed exceptions, challenging the examiners' conclusions but not their specific findings of fact (*id.*, at 758). At this stage of the proceedings, additional counsel entered the picture and new parties were permitted to intervene, resulting in the injection of political issues and arguments (*id.*, at 769, 786).[8]

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6. The facts are not in dispute. These findings were made by the examiners, by the division of the Commission that reviewed the findings, and acknowledged by the District Court (App. B 330, 345; App. J 756-757).

7. In view of the present energy crisis, the Commission recently reemphasized its long-standing policy of "minimizing or eliminating" empty vehicle movements. 38 Fed. Reg., No. 228, pp. 32856-7; No. 231, pp. 33355-6.

8. Appellants Lorch-Westway, *et al.* (Lorch) refer to contentions in one of their pleadings that was "never accepted for the record" to argue that the Commission did not, in fact, permit injection of political issues, as found by the court (J. S. 13-14, App. B). They failed, however, to cite their additional pleadings and briefs which argued that the Commission's implementation of the National Transportation Policy was contrary to policy positions taken by the President of the United States and the Department of Justice. See, *e.g.*, Reply of Lorch to Petitions for Reconsideration, p. 5, and its Petition to Supplement Exceptions, p. 3; plaintiffs' Reply Brief (District Court), pp. 60-61.

The final administrative determination of the proceedings resulted in the reversal of the examiners' conclusions (but not their findings) as to three carriers (appellants here)[9] and the sustaining of their denial of the remaining seven applicants. This was by a two-to-one vote of a division composed of three of the eleven commissioners.[10] The eleven-member Commission declined to review this decision, holding that "no issue of general transportation importance is involved" (*id.*, at 748; J.S. Red Ball, App. B).

The present suit charged that the division's decision was invalid and prayed that the enforcement of its order be enjoined. In its opinion (App. J 739) the District Court summarized the division's report in detail and carefully set forth the reasons why it found the division's orders to be invalid. The court's opinion is clear and comprehensive. Briefly stated, the court concluded that there was no rational basis for the determinative findings and conclusions in the division's report. It found that the division arbitrarily and capriciously applied a discriminatory double standard, giving great weight to evidence

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9. Direct Atlanta-Dallas service, provided by three carriers at the time of the hearing and by 13 at the time of the decision, would be increased by this order to 16. See note 3, *supra*. The division, in its report, gives no indication that it was aware of these increases in service, although it was advised of such increases and although it acknowledged generally its duty to consider increases occurring during the pendency of the proceeding (App. C 106).

10. A dissenting opinion, favoring the denial of all applications, appears as a part of a subsequent decision by the same division after reopening the proceeding for the purpose of approving the application of one more applicant, Jones Truck Lines, Inc. See *Jones Truck Lines, Inc., Extension—Atlanta, Ga.*, 117 M.C.C. 586, 597 (1972). Appellees, as plaintiffs below, sought to supplement their complaint so as to seek review of *Jones* as a part of the present case; however, the court overruled these efforts (App. J 744), and a separate suit challenging *Jones* is now pending before the District Court for the Western District of Missouri, Springfield Division.

favorable to the appellant carriers while ignoring or expressly refusing to give weight to the same or similar evidence favorable to appellees, and, in some instances, justifying its refusal to give credence to evidence favorable to appellees by stating reasons that were equally applicable to evidence, favorable to appellant carriers, upon which its critical conclusions were based."[11]

The court, therefore, set aside the Commission's orders and enjoined the issuance of the certificates authorized therein, concluding that the division's findings and conclusions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706 (2) (A). The court affirmatively refrained from expressing any opinion concerning the ultimate issue of public convenience and necessity, recognizing the Commission's exclusive prerogative to make such determination. When requested by post-judgment motion of the United States and Commission (United States) (App. K 795) to remand the proceeding to the Commission, the District Court concluded that the ends of justice would be best served by directing the Commission to make a determination of public convenience and necessity on the basis of a new record, holding that, under the peculiar circumstances of the case, further proceedings on the present record "would only create further confusion and result in injustice" (App. N 817).

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11. Lorch charges the District Court with holding the examiners' conclusions to be "nonreviewable by the Commission," thereby changing "the statutory relationship between hearing examiners and their agency" (J.S. 4, 19). The charge is unsupported. It is also directly contrary to the court's careful description of its review. As explained, the court considered both the examiners' report and the division's report precisely as directed by *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951). (App. J 776).

MOTION TO DISMISS APPEAL OF JOHNSON MOTOR LINES, INC., CASE NO. 73-1069

Appellees move to dismiss Case No. 73-1069 (Johnson), on the ground that this Court does not have jurisdiction over the appeal. Jurisdiction is lacking because the appellant failed to file a timely notice of appeal as required by 28 U.S.C. § 2101(b).

On September 11, 1973, the District Court entered its judgment (App. J 739-740), and on September 17, 1973, the United States timely filed a motion pursuant to Rule 59(e), F.R.C.P., seeking amendment of the judgment. The motion sought to have this case remanded to the Commission on the ground that the judgment was "a matter beyond the jurisdiction of the Court." (App. K 795). Subsequent to the filing of the motion to amend, but prior to a ruling on the motion, Johnson filed a notice of appeal on September 27, 1973, that resulted in the docketing of the above-numbered cause (App. L 801). On October 4, 1973, the District Court entered an order overruling and denying the motion for amendment of the judgment (App. N 807-808). Following entry of the order overruling the motion to amend judgment, timely notices of appeal were filed by all other appellants *except* Johnson (Apps. M, O, P, Q 803, 825, 827, 831).

The *only* notice of appeal filed by Johnson was that notice filed while the motion to amend judgment was pending.[12] Accordingly, at the time Johnson filed its no-

12. Bowman also filed a notice of appeal while the motion was pending, but, unlike Johnson, Bowman filed a second notice of appeal after the motion was denied (App. M 803). All of the appellants recognize that Johnson sought to appeal only from the judgment of September 11, 1973, whereas all other appellants appealed from that judgment *and* the order of October 4, 1973 overruling the motion to amend (Application to Fix Time or For Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements, App. R 836, n. 1).

tice of appeal, the judgment appealed from was not a final, appealable judgment.

Under almost identical circumstances, this Court, in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 177 (1944), sustained a motion to dismiss, stating:

> "The motion to amend the findings tolled the time to appeal if it was not addressed to 'mere matters of form but raised questions of substance' e.g., if it sought a 'reconsideration of certain basic findings of fact in the alteration of the conclusions of the court.' Leishman v. Associated Elec. Co., 318 U.S. 203, 205. An examination of the motion makes plain that matters of substance were raised. The appeal . . . was accordingly premature. Zimmern v. U.S., 298 U.S. 167."

Here the motion to amend, as in *Crescent*, *supra*, "raised questions of substance," for the District Court was asked on jurisdictional grounds to reverse its finding and conclusion that "no useful purpose would be served by remanding this matter to the Commission" (App. J 787-788).

Dealing with a comparable situation in *Zimmern* (cited in *Crescent*), this Court stated that, at the time the notice of appeal was filed, the operation of the judgment had been suspended, "so that no appeal could be taken from it until it had been amended or confirmed." 298 U.S., at 169. See, *e.g.*, *Forman* v. *Davis*, 371 U.S. 178, 181 (1962); *Leishman* v. *Associated Wholesale Elec. Co.*, 318 U.S. 203 (1943); *Morse* v. *United States*, 270 U.S. 151 (1926). Considering it unnecessary to cite authority, this Court quite recently reaffirmed its well established position on this question, holding that "[a]ppellees' motion for reconsideration . . . suspended the finality of the judgment . . . until

the District Court's denial of the motion . . . restored it. Time for appeal thus began to run from [the denial of the motion]. . . ." *Communist Party of Indiana* v. *Whitcomb*, 2 U.S.L.W. 4129, 4130 (Jan. 9, 1974).[13]

In effect, Johnson has not filed that notice of appeal required by 28 U.S.C. § 2101(b) which allows the jurisdiction of this Court to attach. Therefore, the appeal in No. 73-1069 should be dismissed.

THE QUESTIONS ARE NOT SUBSTANTIAL

The District Court Heard Oral Argument from All Parties

Three appellants (Red Ball, Johnson and Lorch) argue that the court below improperly curtailed or refused to hear oral argument on the issues decided.[14] This is a frivolous contention. The first hearing was before Senior District Judge Miller on plaintiffs' application for a temporary restraining order, and at that time "[t]he questions involved were extensively and thoroughly argued orally." 350 F. Supp. 539, 541 (1972). Subsequently, the parties filed "extensive briefs" on the merits (App. J 744).[15]

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13. The principle applied by this court in the cited cases is embodied in Rule 4 of the Federal Rules of Appellate Procedure for the United States Courts of Appeals.

14. Johnson, for example, argues that the District Court "did not hear oral argument on the merits of the action," and that the court made plain "its belief that oral argument was unnecessary." (J.S. Johnson 6). Red Ball charges that only one judge heard any argument concerning the Red Ball case during the hearing for a temporary restraining order, that the arguments before the three-judge court did not deal with the merits of the case and, further, that this constituted a failure to comply with "a jurisdictional requirement" (J.S. Red Ball 19). Lorch quotes fragmentary phrases from the transcript in a way that suggests that the court *refused* to hear oral arguments (J.S. 7, 8).

15. Specifically, plaintiffs' initial brief comprised 220 pages. Defendants' five briefs exceeded 322 pages, with more than 600 pages of appendices and exhibits. Plaintiffs' reply brief covered 73 pages.

These briefs were submitted to each judge prior to the time the court convened to hear arguments on plaintiffs' motion to supplement the complaint and defendants' motion to terminate the temporary restraining order.[16] During the course of that hearing, the judges made reference to their prior study of the briefs (see, *e.g.*, App. E 567-568, 581-582), and in their oral arguments, *counsel for appellants* emphasized that they "have fully briefed this case," and that the questions "have been thoroughly briefed and are ripe for judicial review" (*id.*, at 531, 558).

Instead of announcing, as contended by these appellants, that oral argument would *not* be heard, Chief Judge Mehaffy observed at the outset that he had had experience in cases of this type and that the court would not permit "fifteen lawyers" to "argue it orally." Instead, he requested that counsel "separate it in groups" and have one lawyer "speak for a group and not have any fifteen arguments or lawyers more or less arguing the same thing." He emphasized that the court would proceed "in an orderly manner and in such a fashion that will give everybody fair treatment" (*id.*, at 458, 460). The court then proceeded to hear oral arguments on the pending motions. However, these arguments became quite extensive, dealing in detail with the merits of the case as well as with issues raised by the motion. For example, counsel for the Commission acknowledged that "Judge Miller is familiar with the facts and background of this case," but for the benefit of the other judges he considered it advisable to "go back a bit and start in the year 1964." He then proceeded to give a detailed history of the proceeding and argued orally the basic contentions embodied in the Government's brief[17]—

16. Plaintiffs' motion was overruled, whereupon defendants' motion was withdrawn (App. E 564, 565).

17. Stating: "I don't know what else can be said about the Commission's order. . . ." (*Id.*, at 507).

an oral argument comprising 36 pages of the reporter's transcript (*id.*, at 480-515).

Next, counsel for Johnson spoke as representative of all intervening defendants, announcing that "I will talk generally about the interests of the intervening defendants in the original action" (*id.*, at 530).[18] After emphasizing the thoroughness of the briefs previously filed, counsel announced to the court that "we are ready to go—on the merits of this case. Let's get to these merits . . . they [appellants] want the decision on the merits now" (*id.*, at 531, 532).

Counsel for appellees then announced that appellees were in agreement with appellants' suggestion that the case be submitted, but asked the court "to allow us seven days to submit our findings of facts and conclusions of law" (*id.*, at 550).

Counsel for Bowman thereupon announced that "[w]e are in absolute accord" with the suggestion that the case "is ripe for judicial proceeding with dispatch and toward an early decision." He urged the court to render "[a]n immediate decision on those issues," and stated that "we join in the proposition that we submit . . . proposed facts and conclusions within the seven day period" (*id.*, at 555-556).

When confronted with the requests by counsel for all parties that the case be forthwith submitted and promptly decided, Judge Williams asked counsel for Bowman:

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18. Counsel for Bowman subsequently argued briefly (*id.*, at 558-559, 578-581); counsel for Lorch made comments (*id.*, at 568, 581); counsel for Red Ball was present but said nothing (*id.*, at 453-454).

> "Is there any matter that has not been thoroughly briefed so far as you and your client are concerned that you would care to raise in additional oral argument?" (*Id.*, at 558).

Counsel for Bowman responded that the cases "have been thoroughly briefed and are ripe for judicial review." Judge Williams then asked again if anything further could be added in oral argument "other than what you have already said." Counsel replied that he would like to file "some brief answer to the reply brief which we feel raised some new matters," explaining that this could be handled in a brief "filed along with the proposed stipulations or conclusions of law and findings of fact that would encompass a suggested order to this court for its consideration" (*id.*, at 558-559).[19]

Following a recess to consider the proposals submitted by the parties, Judge Miller, speaking for the court, announced that:

> ". . . unless there is someone that desires to submit further arguments on the merits of the . . . main case, . . . if there is no further arguments to be submitted on that, we are going to submit that case and take it under consideration and proceed to prepare some decision in that case as quickly as we can" (*id.*, at 566).

Judge Miller then asked, *once again,* if any party had "any objections to that" procedure, whereupon appellant counsel requested a recess to confer among themselves, then Commission counsel, speaking for all appellants, stated: "Your suggestion is acceptable to us" (*id.*, at 567-568). The court thereupon granted the parties' joint request for permission to file proposed findings of fact and conclusions

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19. Although the court granted permission for the filing of such additional brief, none was filed (*id.*, at 556-557).

of law and then took the case under advisement for decision (*id.*, at 568-570).[20]

It is abundantly clear, therefore, that the court convened, on July 24, 1973, with an announced plan to dispose of the motions then pending and reconvene in two weeks to hear oral arguments on the merits (*id.*, at 457-458). However, after being urged by counsel for all parties to take the case under immediate submission, receive proposed findings and conclusions of law, and render a prompt decision, the court accepted these suggestions and proceeded to render its decision pursuant to the *exact procedure* urged by *all* counsel.

Appellants' contentions concerning inadequate oral argument are clearly improper.

There Is No Basis for Appellants' Charge That the District Court Failed to Review the Record

Certain appellants have levelled a serious and wholly unwarranted attack upon the judicial integrity of the District Court. In its opinion, signed by all three judges,[21] the court stated that it reached its conclusion ". . . after full consideration of . . . the pertinent portions of the entire record" (App. J 748, 788). These appellants[22] charge that this was a misrepresentation by the court; that there was, in fact, *no* review by the court of "any significant portion

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20. Counsel for Lorch accuses the court of referring to briefs as "window dressing." (J.S. 8). This comment (App. E 582), made by one judge to another, had to do with a collateral argument concerning alleged misrepresentations in one of the briefs and counsel's request for an opportunity to respond to such assertions.

21. Chief Judge Pat Mehaffy, Court of Appeals, Eighth Circuit; Senior District Judge John E. Miller; and District Judge Paul X Williams.

22. The Jurisdictional Statement filed on behalf of the United States does not embrace these assertions.

of the record made before the Commission" (J. S. Red Ball 10). Appellants' charge is supported solely by an affidavit, containing hearsay statements, executed by an attorney for certain appellants.[23]

Appellees have refrained from filing a motion to strike counsel's affidavit and the arguments based thereon, since we do not rely solely upon the general proposition that assertions of this type will not be considered on appeal.[24] In order to dispel any possible doubt concerning the propriety of the District Court's motives and conduct, appellees prefer to demonstrate the impropriety of such charges.

In reaching its conclusions, the District Court had before it the complete record made before the Commission. In addition, *each individual Judge* was furnished with the following: (a) A comprehensive abstract of the evidence prepared by Johnson and Bowman (7 volumes; 3,200 pages); (b) another comprehensive abstract of the evidence prepared by Red Ball and certain appellees (7 volumes; 1,647 pages); (c) an extensive summary of the evidence contained in the 300-page report of the examiners; (d) another summary contained in the Commission's 225-page report; and (e) seven comprehensive briefs containing detailed quotations and summaries of the evidence (over

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23. The affiant does not appear of counsel on the only Jurisdictional Statements that contain his affidavit (Red Ball, Johnson and Bowman) but does appear of counsel on the other Jurisdictional Statement (Lorch) that asserts contentions based on such affidavit.

24. Charges of this type are improper and may be stricken or wholly disregarded by the court. R. Stern and E. Gressman, Supreme Court Practice 477 (4th Ed. 1969). The practice of inserting in briefs language that tends to impugn the "motives or conduct" of the trial court is strongly disapproved and "statements objectionable in this regard will not be considered." 5 C.J.S. *Appeal and Error*, § 1327 (1958). This court will not ordinarily consider matter dehors the record, whether by affidavit or otherwise. 36 C.J.S. *Federal Courts*, § 201(9)m, at 346; 4A C.J.S. *Appeal and Error* §§ 1206, 1211.

1,200 pages). Each judge therefore had before him summaries, excerpts, charts and briefs totaling approximately 6,600 pages.[25]

In reaching its conclusions, the court stated that it gave "full consideration" or "careful consideration" to the following:

1. "[T]wo sets of detailed abstracts of the evidence . . . [that] are strikingly similar and provide an accurate summary of the evidence" (App. J 746, 775).

2. "[C]omprehensive findings of fact embodied in the appendices to the Examiners' Report and to the Division's Report. No challenge was made by any party to the accuracy of the findings of fact and, collectively, they present a comprehensive summary of the evidence" (*id.*, at 775-776).

3. "[E]xtensive and thorough briefs . . . submitted . . . in support of the respective contentions of the parties in interest . . . ." (*id.*, at 748).

4. "[P]roposed findings of fact and conclusions of law submitted by the parties" (*Ibid.*).

5. "[A] great many of the exhibits" (*Ibid.*).

6. "[P]ertinent portions of the entire record" (*Ibid.*).

All counsel and the court recognized that voluminous portions of the record are inapplicable to the three applications that are the subject of the suit.[26]

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25. With the exception of the briefs, this material duplicated documents contained in the record.

26. *E.g.*, counsel for Johnson, in response to questions from the court, placed emphasis on the fact that much evidence of record had no relationship to the Johnson, Bowman and Red Ball case (App. E 536). The court so found (App. J 775). Specifically, 506 of the 933 public witnesses were presented by applicants *other* than the three here involved. Some witnesses supported more than one applicant; *e.g.*, 746 supported the seven applicants *other* than Johnson, Bowman and Red Ball. (Examiners' Report, p. 4; District Court brief of United States, App. II.)

During the oral arguments the court acknowledged the physical difficulties presented in examining such a large record (App. E 510, 514-515, 547). In recognition of these difficulties, counsel furnished to the court copies of those portions of the record pertinent to their contentions. All parties quoted extensively from the record in their briefs, and each included detailed appendices or exhibits containing specific matters relied upon.[27]

Of paramount significance, however, is the fact that counsel for appellants *urged* the court *not* to review the original record of the hearing before the Commission, but, instead, *to rely upon the detailed abstracts prepared by the parties summarizing all oral and documentary evidence presented at the consolidated hearing.*

Counsel for Johnson commended the seven-volume abstract prepared jointly by Johnson and Bowman as follows:

> "This work, containing in excess of 3,200 pages, capsules this huge record into workable proportions. A set of these volumes is a part of the agency record being certified to this Court. Counsel for intervening defendants are making a set available to each of the judges on the three-judge panel designated to hear this action." (Johnson Brief 9).

Counsel for Bowman, speaking of the same abstracts, stated:

> "At the conclusion of the hearing, we carefully studied and digested all of the testimony and exhibits and submitted to the Commission an abstract, not from the standpoint of advocates, but with a sincere effort to present the summary in an impartial factual man-

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27. *E.g.*, Lorch filed a series of exhibits consisting of 435 pages of summaries and tables.

ner, emulating to the best of our ability the judicial approach. . . . Copies of the seven (7) volume abstract are being made available to the Court . . . . *It is hoped that the Abstract will assist the Court and serve as a basic reference for any factual statements made in Commission orders or briefs.*" (Bowman Brief 3-4) (Emphasis added).

Initially, appellees' counsel did not furnish the court copies of their 1,647-page abstract (prepared jointly with Red Ball), since it was included as a part of the record that had been filed; however, *at the request of the court,* extra copies were furnished.[28]

The APA requires the court to "review the whole record *or those parts of it cited by a party.*" 5 U.S.C. § 706(2) (Emphasis added). This is precisely what was done by the District Court.

The District Court Followed Proper Procedures in Preparing Its Opinion

Certain appellants have suggested that the three judges of the lower court did not perform their judicial function. The court is charged with "adopting verbatim" or "mechanically adopting" the findings of fact and conclusions of law proposed by appellees.[29]

As previously noted, the District Court considered briefs and oral arguments on every facet of this case,

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28. In addition to the two sets of abstracts included as a part of the Commission record, extra copies, as filed below, are also included in the record before this Court. (See District Court clerk's certification.) Appellant Red Ball, while recognizing that the abstracts "accurately reflect a summary of the testimony of the witnesses," suggests that the exhibits could be examined only from the basic record (J.S. Red Ball 10). However, as stated by other appellant counsel, the abstracts summarized *all* evidence, oral and documentary.

29. The United States has not advanced such an argument.

and stated that it welcomed the submission by all parties of proposed findings and conclusions prior to the rendering of its decision (App. D 571-572).[30]

The District Court did not "mechanically adopt" appellees' proposals. The court wrote its own opinion. After summarizing its study of the record, the briefs, and the findings and conclusions proposed by appellants and appellees, it adopted appellees' proposals after finding that they "are correct".[31] The court added other comments and quotations not included in appellees' proposals.[32] The action of the District Court in preparing its opinion is neither error, nor an abdication of judicial function, and most certainly is not a basis for this Court to note probable jurisdiction. *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651 (1964).

The United States submitted proposed findings and conclusions, containing three blank signature lines for the

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30. The court entered two orders providing for the submission of proposed findings and conclusions. (District Court clerk's certification, doc. nos. 75, 76, Vol. IV.)

31. "Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

"After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth." (App. J 748)

32. *E.g.*, appellees proposed a single sentence recording the court's refusal to review *Jones* (App. I 699); the court wrote over five pages (App. J 789-794). The court's independent research is reflected by its quotation from, and citation to, cases not quoted or cited in appellees' proposal and the changes it made in appellees' proposed conclusion (*id.*, at 774, 776, 788). The procedure followed was that commended in *Schilling* v. *Schwitzer-Cummins Co.*, 142 F.2d 82 (CADC 1944).

judges to sign (App. F 585-609). Red Ball, Johnson and Lorch actually submitted a "Proposed Opinion" together with findings and conclusions with similar signature spaces (App. G 615-645). Bowman was not at all subtle—the document it submitted was entitled "Opinion," with signature spaces (App. H 647-695). The appellees submitted only "Proposed Findings of Fact And Conclusions of Law" (App. I 697-738).

All parties understood that the District Court desired to have the benefit of proposed findings and conclusions prior to its reaching a decision.[33] This procedure is consistent with local practice and the Federal Rules of Civil Procedure.[34]

The District Court followed the guidelines of the Eighth Circuit set forth in *Bradley* v. *Maryland Casualty Company*, 382 F.2d 415, 423 (1967), cited by Bowman (J.S. 7, 8). Judge, now Justice, Blackmun, applied the holding of *El Paso, supra,* and determined that the adopted findings were "clearly supported by the evidence and not vulnerable."[35] The District Court's opinion in the case at bar likewise is carefully drawn, includes material not contained in appellees' proposed findings, and cites many of the cases cited by appellants. The complaint of these appellants is with the decision reached by the court, not with the use of appellees' proposed findings and conclusions.

This Court held in *El Paso, supra,* that findings and conclusions prepared by counsel and adopted by the court

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33. See note 30, *supra.*

34. Rule 13, Rules of The United States District Courts for the Eastern and Western Districts of Arkansas, permits the court to direct the filing of proposed findings of fact and conclusions of law; Rule 52(a), F.R.C.P.

35. Judge Mehaffy, a member of the three-judge panel, was also a member of the panel which considered *Bradley, supra.*

are satisfactory unless unsupported by the evidence, even though the lower court there announced its decision and told prevailing counsel to prepare the findings and a judgment. Mr. Justice Douglas stated:

> "Those findings, though not the product of the workings of the district judge's mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 184-185." 376 U.S. at 656.[36]

In *Crescent, supra*, Mr. Justice Douglas, after noting the defendants' allegation that the court's findings were "mainly taken verbatim from the government's brief," stated:

> "But they are nonetheless the findings of the District Court. And they must stand or fall depending on whether they are supported by the evidence. We think they are." 323 U.S., at 184-185.

While appellants refer to other cases, it should be noted that none of the court of appeal cases cited by appellants reversed because of the trial court's use or "verbatim adoption" of proposed findings prepared by counsel. It should also be noted that each of the later decisions relied upon by appellants actually cite *El Paso* for the principle that the findings, *not who authored them*, are the important consideration.[37] In addition, some of the recent

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36. See also concurring opinion of Mr. Justice Harlan: "Nevertheless, if they are supported by evidence, they are not rendered suspect simply because the trial court, as here, has accepted *in toto* the findings proposed by one side or the other." 376 U.S., at 662-663.

37. *Industrial Building Materials, Inc.* v. *Interchemical Corporation*, 437 F.2d 1336, 1339 (CA9 1970); *In re Las Colinas, Inc.*, 426 F.2d 1005, 1009 (CA1 1970); *Bradley* v. *Maryland Casualty Co.*, 382 F.2d at 423; *Featherstone* v. *Barash*, 345 F.2d 246, 251 (CA10 1965).

decisions of the courts of appeals not only cite *El Paso*, but also hold that all findings of fact and conclusions of law are to be considered on an identical standard regardless of whether they were court originated or party suggested.[38] While appellants cite and quote *Roberts* v. *Ross*, 344 F.2d 747 (CA3 1965), they have ignored the finding therein which is pertinent to the present situation, namely: "Most of the reported cases which have approved findings and conclusions which the trial judge has adopted in the form prepared by counsel without change involve findings and conclusions submitted before decision." 344 F.2d, at 747, n. 4.

Appellants' unfortunate interchange of the terms "findings," "judgment" and "opinion" of the District Court is improper. The District Court's opinion and judgment were its own product, and neither was suggested or offered by appellees. A contention similar to the due process argument presented by Red Ball (J.S. 14), concerning the adoption of appellees' proposed findings, was considered and rejected in *Bradley, supra*. Likewise, appellants' reliance on *Ayrshire Collieries Corp.* v. *U. S.*, 331 U.S. 132 (1947), is misplaced, because here the District Court was properly convened and all judges participated in the decisions, opinions and judgments of the court, as required by 28 U.S.C. §§ 2284, 2325.

The suggestion that Judges Mehaffy, Miller and Williams acted improperly or abdicated their judicial function by utilizing appellees' proposed findings is unworthy of consideration by this Court. Appellants should not be heard to question the integrity of the three judges simply

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38. *Eli Lilly & Co.* v. *Generix Drug Sales, Inc.*, 460 F.2d 1096, 1099 (CA5 1972); *Railex Corporation* v. *Speed Check Co.*, 457 F.2d 1040, 1042 (CA5 1972); *In re Flora Mir Candy Corporation*, 432 F.2d 1060, 1062 (CA2 1970); *Schnell* v. *Allbright-Nell Co.*, 348 F.2d 444, 446 (CA7 1965).

because their view of the law did not coincide with that of the judges who objectively considered the record, the briefs and the oral arguments.

The District Court Applied Proper Standards of Judicial Review

Appellants allege that the District Court utilized an improper standard of judicial review—that the APA does not authorize the court to hold unlawful and set aside agency decision *in an adjudicatory proceeding* found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Appellants charge that the District Court decision creates a "new standard" (J.S. Johnson 13), or "novel standard" (J.S. United States 9), or "Novel Concept of De Novo Judicial Review" (J.S. Lorch 16). More specifically, it is asserted that:

> ". . . absent questions of the agency's authority which are not involved here, an agency determination in adjudicatory proceedings which is supported by substantial evidence cannot properly be found to be 'arbitrary or capricious.'" (J.S. United States 10).

It should be emphasized that the District Court's recognition of its limited scope of review is fully consistent with the contentions of all parties; and, further, that the court carefully refrained from usurping the agency's functions. At the same time, the court responded to the requirements of the APA and reviewed the agency proceeding in accordance with the statute and the cases decided thereunder. In performing this function the court was called upon to decide whether the division acted arbitrarily and capriciously in applying different standards to its consideration of the evidence. The court found that a discriminatory double standard was applied in arriving at the determinative findings and conclusions in the di-

vision's report. The court's opinion clearly enumerates those errors of law. They include, *inter alia*:

(1) Refusal to give credence to appellees' voluminous traffic (transit-time) studies on the ground that they covered periods of time subsequent to the filing of the applications, while basing critical findings favorable to appellant carriers upon their own studies that covered similar or later periods (App. J 763-764, 772, 779).

(2) Refusal to give credence to appellees' traffic studies on the ground that they covered short periods of time, while basing critical findings favorable to appellant carriers upon their own studies that covered identical or shorter periods (*id.*, at 762-763, 778-779).

(3) Basing critical findings, favorable to appellants, on portions of shipper-sponsored traffic studies, while refusing to make findings, favorable to appellees, based on other portions or summaries of the same exhibits (*id.*, at 781).

(4) Basing critical findings, favorable to appellants, on portions of appellants' own traffic studies, while refusing to make findings, favorable to appellees, based on other portions or summaries of the same exhibits (*id.*, at 780).

(5) Basing critical findings, favorable to appellants, on service restrictions of appellees in official tariffs, while refusing to make findings, favorable to appellees, on identical or similar restrictions of appellants in the same tariffs (*id.*, at 764-765, 781).

(6) Official notice by the division (on its own motion) of facts in an industry publication, favorable to appellants, while refusing (upon request of appel-

lees) to take notice of similar facts, unfavorable to appellants, appearing in the same publication (*id.*, at 765, 781-782).[39]

Clearly, this action by the division ". . . was an exercise of arbitrary power, at variance with 'the rudiments of fair play' . . . long known to our law." *West Ohio Gas Co.* v. *Public Utilities Commission*, 294 U.S. 63 (1935). The exercise of such arbitrary power led the court below to conclude that the division's report "sounds more in advocacy than in impartial adjudication" (*id.*, at 787).

After making the findings discussed above, the court recognized that the law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated (*id.*, at 779). As stated in the concurring opinion in *Mary Carter Paint Co.* v. *FTC*, 333 F.2d 654, 660 (CA5 1964), *rev'd on other grounds*, 382 U.S. 46 (1965), "there may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." As the decision below makes clear, the error of the Commission was that it acted arbitrarily and capriciously in applying different standards and that, therefore, the error was one of *law*, not of fact (*id.*, at 774).

Legal error is further demonstrated by the court's recognition of the division's failure to make any "comparative analysis of the quantity of service available between any of the involved points" (*id.*, at 782). While professing to "take official notice" of recent increases in available service (App. C 106), as it was required to do, the division made no analysis, evaluation or acknowledgment of the

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39. The division made critical findings of facts from the record, favorable to appellants, that were *directly contrary* to the more current facts that appeared in the officially-noted publication (App. B 148; App. J 765, 781-782).

tremendous changes that occurred while the proceeding was pending (see notes 3 and 9, *supra*). The division was apparently unaware of the impact of its order (*id.*, at 782-784).

Viewing the record in its entirety, consistent with *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951), the court further determined that the decision of the Commission was not based upon the entire record, did not meet the requisite of clarity, included ultimate conclusions based on subordinate findings unsupported by consideration of the entire record, and was, therefore, arbitrary and capricious (*id.*, at 776-778).

While the court made other and similar findings and conclusions, the foregoing demonstrates that the court did not weigh the evidence. It dealt in terms of errors of law. Indeed, it was the court's responsibility to do so under 5 U.S.C. § 706.

The District Court recognized its limited scope of review but concomitantly recognized that it must find whether there was a rational basis for the conclusions reached by the agency; otherwise, the reviewing court would have little, if any, function.[40]

Certain appellants argue that, in applying 5 U.S.C. § 706, "the District Court misread the decision in *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402." (J.S. Lorch 17). The United States goes further. It asks this Court to modify its holding in *Overton* and establish a limitation on the scope of judicial review that is directly contrary to the APA, to this Court's rulings in other cases,

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40. ". . . [T]he court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." In so doing it must engage in "a thorough, probing, in-depth review." *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 415, 416 (1971).

and to decisional law consistently followed by other federal courts over a long period of years.

The United States does not contend that the District Court did not have adequate grounds for finding the division's actions to be arbitrary and capricious. Instead, it takes the position that the court lacked authority to even consider such a question in reviewing this adjudicatory proceeding. It contends that in such cases the court cannot find agency action to be "arbitrary or capricious" if such action is "supported by substantial evidence." (J.S. United States 10).

This contention does violence to the statute and established decisional law. As stated by this Court in *Overton*, 401 U.S., at 413-414, in determining the standard for review, "we must look to § 706 of the Administrative Procedure Act, 5 U.S.C. § 706 . . . which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet *six separate standards.*"[41] (Emphasis added). Under the first of these

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41. 5 U.S.C. § 706 provides:

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(Continued on following page)

"six separate standards," the decision must be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Under the fifth standard, it must be set aside if "unsupported by substantial evidence"; but, "the substantial-evidence test is authorized only when the agency action is taken pursuant to a rule-making provision of the Administrative Procedure Act . . . or when the agency action is based on a public adjudicatory hearing." 401 U.S., at 414.[42] Since the action in the case at bar was based upon an adjudicatory hearing, appellants argue that, under *Overton*, the substantial-evidence test is the *only* test to be applied. This is directly contrary to this Court's clear statement in *Overton* that:

> ". . . In *all* cases agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements." (*Ibid.*) (emphasis added).

Apparently recognizing that their argument does violence to the statute, counsel contend that, in reviewing agency action based on adjudicatory hearings, a court should apply *only* the substantial-evidence test "absent questions of the agency's authority." (J.S. United States

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Footnote continued—

> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

42. *Accord, Camp* v. *Pitts*, 411 U.S. 142 (1973).

10). No explanation is given why counsel concedes that standard No. 3, involving agency authority, is applicable to *all* cases, while denying applicability of the other standards. Standards No. 2 and 4 are in no different position than standard No. 3. Under the second, agency action must be set aside if it was contrary to constitutional right, power, privilege, or immunity, and, under the fourth, if lawful procedure was not observed. They argue that if substantial evidence can be found, the agency's order must be upheld even though it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *A fortiori*, it follows that if the substantial-evidence test can be met, it matters not that the agency violated constitutional rights or procedural requirements. This, of course, not only flies in the face of the statute[43] and plain logic, but is manifestly contrary to the holding in *Overton* that in "all cases" agency action must be set aside if it was arbitrary or capricious, or failed to meet statutory or procedural requisites, or was contrary to constitutional requirements.

Appellants' contentions are also contrary to this Court's recent rulings in *Atchison, T. & S. F. R. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800 (1973). In that case, a district court set aside an order of the Commission *even though it expressly found that the Commission's conclusions were supported by substantial evidence* (352 F. Supp. 365, 367), and, on appeal, that finding was not challenged.

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43. Among other things, a reading of § 706 refutes the argument. The statute is plain on its face, and § 706(2) clearly sets out six tests in separate subsections. The disjunctive term "or" is employed in a statute to show that the failure to comply with *any* requirement therein imposes liability. 1A Sutherland Statutory Construction § 21.14 (C. Sands 4th ed. 1972). Furthermore when, in a statutory enumeration of things, the disjunctive term "or" is placed immediately before the last number of the series (as between § 706(2)(E) and (F)), the term "or" is understood to exist between the previous members. 50 Am. Jur. *Statutes* § 281, at 267.

After noting this finding, however, this Court agreed with the district court that the Commission's order was invalid for other reasons.[44] The Commission's order was not set aside because of lack of "the agency's authority" or because it was not "supported by substantial evidence." If the contentions now asserted by appellants in the case at bar had been adopted in *Atchison*, this Court's review of the agency's order there would have ended with its recognition that the order was supported by substantial evidence.[45]

Appellants challenge the District Court's adherence to a principle of judicial review that has been consistently followed by other district courts reviewing Commission proceedings. For example, in *Clearfield Cheese Co.* v. *United States*, 308 F. Supp. 1072 (W.D. Mo. 1969), the court clearly recognized the separate nature of the six statutory tests.[46] That case was recently cited as authority for this proposition in *Florida Terminal & Trucking Co.* v. *United States*, 363 F. Supp. 1355, 1359 (M.D. Fla. 1973).

In the case at bar, the District Court relied upon other decisions in which Commission orders in adjudicatory proceedings were set aside, *not for lack of substantial*

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44. Separate opinions were issued. The opinion by Mr. Justice Douglas describes several errors of law in the Commission's decision.

45. It should be noted that the argument advanced on behalf of the Commission in the case at bar was *not* advanced on behalf of that agency as an appellant in *Atchison*.

46. "Section 706, Title 5, USC . . . states that review shall be on the 'whole record' and that the reviewing court shall 'hold unlawful and set aside agency action, findings and conclusions found to be' arbitrary, capricious, abuse of discretion, or otherwise unlawful *or* contrary to a constitutional right, power, privilege or immunity, *or* in excess of agency jurisdiction, *or* unsupported by substantial evidence, *or* arrived at without observance of lawful procedures *or* 'unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.' " 308 F. Supp., at 1074 (emphasis added).

evidence, but because they were based upon findings that were arbitrary or capricious. These include *Campbell Sixty-Six Express, Inc.* v. *United States,* 258 F. Supp. 529 (W.D. Mo. 1966), in which the court recognized that the terms "arbitrary" and "capricious" mean "without rational basis." In the case at bar, the District Court made identical findings and conclusions, setting aside the Commission's order for the identical reasons enunciated in *Campbell*[47] (App. J 777, 785).

The District Court also relied upon: *Columbia Shippers and Receivers Ass'n, Inc.* v. *United States,* 301 F. Supp. 310, 319 (Del. 1969), wherein the court stated that "*in addition* to the 'substantial evidence' test generally applicable to this action," § 706(2) (A) of the APA requires that the reviewing court hold unlawful and set aside agency action, findings and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (emphasis added); *Eastern Central Motor Carriers Ass'n* v. *United States,* 239 F. Supp. 591, 594 (D.C. 1965), in which the court recognized that agency action must be set aside if it is "either" arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, *or* in excess of statutory jurisdiction, *or* unsupported by substantial evidence; *Mitchell Bros. Truck Lines* v. *United States,* 225 F. Supp. 755, 758 (Ore. 1963), *aff'd* 378 U.S. 125 (1964); *Heavy-Specialized Carriers Conference* v. *United States,* 231 F. Supp. 968, 970 (E.D. Mo. 1964); *Nashua Motor Express, Inc.* v. *United States,* 230 F. Supp. 646 (N.H. 1964); *Youngblood Truck Lines, Inc.* v. *United States,* 221 F. Supp. 809, 812 (N.D. N.C. 1963); *Omaha Grain Exchange* v. *United States,* 194 F. Supp.

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47. Although, in *Campbell,* the Commission's order granting a certificate was set aside, with no remand, for the identical reasons assigned in the case at bar, the United States and Commission did not appeal.

1963), *aff'd*, 377 U.S. 311 (1964),[49] and *Pacific Coast Wholesalers Ass'n* v. *United States*, 81 F. Supp. 991 (S.D. Cal. 1949), *aff'd* 338 U.S. 689 (1950).[50]

Examples of cases where three-judge district courts "permanently enjoined" or "vacated, annulled and set aside" orders of the Commission and in which the United States and the Commission did not appeal are *Garrett Freightlines, Inc.* v. *United States*, 324 F. Supp. 575 (Idaho 1971); *Ashworth Transfer, Inc.* v. *United States*, 315 F. Supp. 199 (Utah 1970); *Pennsylvania R.R.* v. *United States*, 202 F. Supp. 584 (E.D. Pa. 1962), and *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529 (W.D. Mo. 1966).

It is clear, therefore, that under the statutes and the decisions, remand to the Commission is not mandatory.[51] Yet, the only issue presented below was "that the proceeding *must* (*not should*) be sent back to the Commission" (App. N 815).[52] The second question, whether the proceeding *should* have been remanded, was not raised below and therefore should not be considered by this Court. This Court has long held that questions presented on appeal must have been fully presented below, *e.g.*, *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365, 371-372, n. 4 (1967);

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49. The three-judge court had found in setting aside an order of the Commission ". . . defendants should be permanently enjoined from enforcing the terms of said order. . ."

50. The form of the judgment provided "the same are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined." See App. N 818-819.

51. None of the cases cited by appellants holds to the contrary.

52. The sugggestion that remand be ordered was raised only in the post-judgment motion of the United States. The other appellants neither joined in nor supported such suggestion; however, Bowman and Johnson now assert this contention for the first time on appeal. (J.S. Bowman 25; J.S. Johnson 15).

Neely v. *Martin K. Eby Construction Co.*, 386 U.S. 317, 330 (1967); *California* v. *Taylor*, 353 U.S. 553, 556-557, n. 2 (1957).

It should further be noted that the motion to amend the judgment revealed a misunderstanding of the scope of such judgment. It was argued that the court should not "bar the Commission from further consideration of the involved proceeding to determine where lies the public convenience and necessity" (App. K 798). In its opinion overruling the motion, the Court carefully explained that by no means had it barred the Commission from determining where lies the public convenience and necessity. The full scope and impact of the Court's judgment is succinctly explained in the Court's opinion on the motion:

> "The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid. The motion does not contest the court's ruling that such orders are invalid, and, since such orders are invalid, their enforcement should be enjoined.
>
> "The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's pre-

rogative to exercise its administrative functions" (App. N 822).

A very analogous situation is presented in *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543 (CADC 1969), involving multiple applications for a television license. Having found the order erroneous, and rather than again remand, the court held that an entirely new proceeding should be instituted by the Commission. Judge, now Chief Justice, Burger, stated:

> "The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that *it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair.*" 425 F.2d, at 550 (emphasis added).

Here, as in the above FCC case, there exist substantial and compelling reasons for not remanding this proceeding to the Commission. Here, as in that case, the "administrative conduct reflected in [the] record is beyond repair," and both courts found it would "serve no useful purpose" to remand (App. J 788).

In the above case the court noted the agency's "hostility" to certain parties. In the case at bar the court noted the Commission's "predilection to grant these particular applications" and an attitude that "sounds more in advocacy than in impartial adjudication" (App. J 787). Here,

the court also found that "a remand would only create further confusion and result in injustice" (App. N 817). This finding is compelled by many facts and circumstances, including the improperly injected political issues (App. J 769, 786); the voluminous evidence that is wholly unrelated to a determination of the issues presented by these applications;[53] and the court's recognition that the facts of record "have little bearing on a determination at this time of the present or future public convenience and necessity," (*id.*, at 787), there having been "a drastic change in circumstances since the record was closed in 1967" (App. N 815).[54]

The court repeatedly made it clear that the Commission is free to proceed further with a determination of the issues, but, under these peculiar circumstances, recognized that "a remand of this record would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity" (*id.*, at 814).

Appellees submit that remand to the Commission is not mandatory and, furthermore, that under the particular circumstances of this case the District Court properly declined to remand the case for further proceedings on the present record.

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53. See note 26, *supra*.

54. For example, evidence relating to service provided by three Atlanta-Dallas carriers in 1966-1967 would obviously shed no helpful light on a determination of the adequacy of service provided by 13 or more carriers now in operation. See note 3, *supra*.

CONCLUSION

There is no substantial question presented by these appeals. The assertions by the United States and the Commission that questions of "public importance" or of "major importance" are involved do not comport with the ruling by the eleven-member Commission that "no issue of general transportation importance is involved" (J.S. Red Ball B2). Case No. 73-1069 (Johnson) should be dismissed. The judgment of the District Court should be affirmed.

Respectfully submitted,

DON A. SMITH
THOMAS HARPER
P. O. Box 43
Fort Smith, Arkansas 72901

WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105

WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D. C. 20004

PHINEAS STEVENS
P. O. Box 22567
Jackson, Mississippi 39205

PHILLIP ROBINSON
P. O. Box 2207
Austin, Texas 78767

M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees

February, 1974

COURT, U. S.

MAR 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1069

JOHNSON MOTOR LINES, INC.,
Appellant,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas

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BRIEF IN OPPOSITION TO MOTION TO DISMISS AND AFFIRM

BRYCE REA, JR.
DONALD E. CROSS
918 - 16th Street, N.W.
Washington, D. C. 20006

Counsel for Appellant
Johnson Motor Lines, Inc.

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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BRIEF IN OPPOSITION TO MOTION TO DISMISS AND AFFIRM

I

Relying primarily upon *United States* v. *Crescent Amusement Co.*, 323 U.S. 173 (1944), appellees move to dismiss the appeal as premature. *Crescent* is inapposite. There, the time for appeal was tolled by a motion to amend *substantive findings* in the judgment. Here, the Commission's September 14th motion expressly sought a

change in the "form" of the September 11th judgment (J.A. p. 795). In its October 4th memorandum denying relief the District Court points out that the motion ". . . does not contest the court's [September 11th] ruling that the [I.C.C.] orders are invalid. . . ." (J.A. p. 822). As the September 11th judgment of the District Court finally settled the substantive questions in controversy in this Court, appellant's September 27th notice of appeal was timely. *Federal Trade Commission* v. *Minneapolis Honeywell R. Co.*, 344 U.S. 206 (1952). Indeed, the September 11th judgment was recognized as a final adjudication of the merits of the case by all appellants when they filed notices of appeal within 60 days thereafter (J.A. p. 837). Had the appeals been filed within 60 days of the October 4th order denying the Commission's motion, but more than 60 days after the September 11th judgment, the only question before this Court might well be whether the District Court appropriately declined to remand. *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17 (1952).

Song Jook Suh v. *Rosenberg*, 437 F. 2d 1098 (9th Cir., 1971) provides an alternative answer to the motion to dismiss. There, as here, the appeal was taken during the pendency of a post-judgment motion. There, as here, the motion was denied. Holding the appeal good, the Ninth Circuit reasoned that the notice of appeal, which expressly referred to the first judgment, ". . . became effective when the judgment became final." 437 F. 2d at 1101. Thus, assuming the Commission's September 14th motion delayed the finality of the September 11th judgment, Johnson's September 27th notice of appeal, which expressly referred to the judgment, remained on file and became effective when the judgment became final.

Finally, appellees do not challenge the timeliness of the appeal of Lorch-Westway Corporation, et al. (Lorch), in No. 73-1071. Lorch intervened in the agency proceeding

in support of Johnson's certificate application and in the District Court in support of the Commission's order granting it. Should appellees' motion to dismiss this appeal be granted, Johnson requests that its Jurisdictional Statement and this Brief in Opposition to Motion to Dismiss and Affirm be considered by the Court in support of the appeal in No. 73-1071.

II

On the merits of the appeal, appellees isolate various facets of the questions presented and argue that no one of them, standing alone, warrants this Court's consideration. But, as pointed out in the Jurisdictional Statement, the method employed in the lower court's consideration and determination of the case and the scope of review utilized in reaching its judgment, *viewed collectively*, ". . . tend to merge into a single substantial question warranting plenary review by this Court" (J.S. p. 15).

Finally, the factual errors in the District Court's opinion, outlined in the Jurisdictional Statement (J.S. pp. 9-12), are not denied by appellees. Significantly, most of those errors turn on material contained in pleadings filed *subsequent* to the agency hearing. These pleadings constitute a part of the record before the agency [5 U.S.C. § 556(e)] and are therefore a part of the record certified by the I.C.C. to the District Court. However, these pleadings are *not* summarized in the abstracts of testimony and exhibits appellees commend as a substitute for the agency record the District Court must review in reaching its determination under 5 U.S.C. § 706. Thus, assuming, *arguendo*, that abstracts of testimony and exhibits before the agency were properly relied upon below,

those documents do not contain portions of the administrative record relevant and material to the decision here challenged.

Respectfully submitted,

BRYCE REA, JR.
DONALD E. CROSS
918 - 16th Street, N.W.
Washington, D. C. 20006

Counsel for Appellant
Johnson Motor Lines, Inc.

Of Counsel:

REA, CROSS & KNEBEL
700 World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

March 4, 1974

CERTIFICATE OF SERVICE

I, Donald E. Cross, counsel for appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 4th day of March, 1974, I served copies of the foregoing document on the parties hereto, postage prepaid by first class or air mail, as follows:

Thomas A. Harper, Esq.
Don A. Smith, Esq.
Post Office Box 43
Fort Smith, Arkansas 72901

Robert E. Joyner, Esq.
2008 Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Avenue, N.W.
Washington, D. C. 20036

Richard H. Streeter, Esq.
Associate General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

John H. D. Wigger, Esq.
Department of Justice
Washington, D. C. 20530

Solicitor General
Department of Justice
Washington, D. C. 20530

Phillip Robinson, Esq.
Post Office Box 2207
Austin, Texas 78767

Robert L. Jones, Jr., Esq.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Drew L. Carraway, Esq.
618 Perpetual Building
1111 E Street, N.W.
Washington, D. C. 20004

M. Ward Bailey, Esq.
2412 Continental Life Building
Fort Worth, Texas 76102

Frank W. Taylor, Jr., Esq.
Wentworth E. Griffin, Esq.
1221 Baltimore
Kansas City, Missouri 64105

Honorable Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

Maurice F. Bishop, Esq.
601-609 Frank Nelson Building
Birmingham, Alabama 35203

Jerry C. Prestridge, Esq.
Post Office Box 1148
Austin, Texas 78767

Charles S. Rhyne, Esq.
Courts Oulahan, Esq.
839 - 17th Street, N.W.
400 Hill Building
Washington, D. C. 20006

DONALD E. CROSS

OPPOSITION BRIEF

SUPREME COURT U. S.

NO. 73-1071

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

LORCH-WESTWAY CORPORATION, *et al.*,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS–
FORT SMITH DIVISION

BRIEF IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Attorneys for Appellants
Lorch-Westway Corporation, et al.

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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BRIEF IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM

Appellees' Motion to Dismiss and Affirm (Motion) buttresses Appellants' Jurisdictional Statements and gives added justification to this Court's taking jurisdiction. Appellees' argument shows clearly, as Appellants have demonstrated, that this is not a case where this Court will be required to review the substantiality of the evidence in the record below.

Court's Mechanical Verbatim Adoption of Appellees' Proposed Findings

Appellees' three "examples" of "other comments and quotations not included in Appellees' proposals" (Motion, p. 18, fn. 32) are, in fact, the only changes made by the Three Judge District Court. Except for these three insubstantial alterations, that Court's decision totally mirrors the proposed findings and conclusions of Appellees.[1] The appended table demonstrates this fact.

Appellees attempt to rationalize verbatim adoption as a practice which has recently been countenanced by several Courts of Appeals (Motion, p. 21, fn. 38). All but one of the decisions cited by Appellees involve patent cases which concern highly technical issues requiring expertise not possessed by those Courts. The other decision involves a complex bankruptcy case in which the Court explicitly disapproved the practice of verbatim adoption except where the subject matter is of a highly technical nature. *Flora Mir Candy Corporation v. R.S. Dickson & Co.*, 432 F.2d 1060, 1062, fn. 2 (2d Cir. 1970). Just as this qualification does not apply to antitrust cases, *United States v. El Paso Natural Gas*, 376 U.S. 651, 657, it does not apply to interstate commerce cases. As to ordinary cases, the practice is strongly condemned, especially where the extent of the uncritical adoption is as significant as here. See, *e.g.*, *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656-57; *Industrial Building Materials, Inc. v.*

[1] Appendix A to the Court's Opinion, "Status of Jones Truck Lines, Inc." (Jt. App. J, pp. 789-794), concerns a matter disposed of by the Court on motion and involves a tangential matter related in no manner whatsoever to the merits of the case. Why the appendix was included is not clear on the face of the document.

Interchemical Corp., 437 F.2d 1336, 1340 (9th Cir. 1971); *In Re Las Colinas, Inc.*, 426 F.2d 1005, 1010 (1st Cir. 1970); *Featherstone v. Barash*, 345 F.2d 246, 249 (10th Cir. 1965); *Roberts v. Ross*, 344 F.2d 747, 752 (3d Cir. 1965); *Louis Dreyfus & Cie. v. Panama Canal Co.*, 298 F.2d 733, 738 (5th Cir. 1962); *Chicopee Mfg. Corp. v. Kendall Co.*, 288 F.2d 719, 724 (4th Cir. 1961), *cert. denied*, 368 U.S. 825; *United States v. Forness*, 142 F.2d 928, 942 (2d Cir. 1942), *cert. denied*, 316 U.S. 694; see Nordbye, *Improvements in Statement of Findings of Fact and Conclusions of Law*, 1 F.R.D. 25, 30 (1940); Otis, *Improvements in Statement of Findings of Fact and Conclusions of Law*, 1 F.R.D. 83, 85 (1940).

Precedent for Reversal

Appellees contend that the degree of judicial abdication by the Three Judge District Court[2] is defensible because there is no precedent for reversal on this ground. This contention is manifestly erroneous. *In Re Las Colinas, Inc.*, 426 F.2d 1005, 1017 (1st Cir. 1970);

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[2] Appellees attempt to cast this issue as one involving the integrity of the three judges on the panel. (Motion, pp. 13, 21). Appellants do not challenge integrity, only abdication. The danger inherent in relinquishing judicial duties to advocates is well-stated in *Brenger v. Brenger*, 142 Wis. 26, 125 N.W. 109 (1910), quoted in Otis, *Improvements in Statement of Findings of Fact and Conclusions of Law*, 1 F.R.D. 83, 85 (1940):

> "Experience shows that counsel, the most able, honorable and conscientious . . . after the close of a hotly contested case, are not in the frame of mind, ordinarily best suited to drafting the findings, which must express the judgement of the court. . . . The making of the findings is a purely judicial function."

This statement also is quoted in *In Re Las Colinas*, 426 F.2d 1005, 1009 n. 4 (1st Cir. 1970).

Industrial Building Materials, Inc. v. Interchemical Corp., 437 F.2d 1336, 1345 (9th Cir. 1971); *Featherstone v. Barosh*, 345 F.2d 246, 251 (10th Cir. 1965); *Roberts v. Ross*, 344 F.2d 747, 753 (3d Cir. 1965); *Chicopee Mfg. Corp. v. Kendall Co.*, 288 F.2d 719 724 (4th Cir. 1961), *cert. denied*, 368 U.S. 825. In each of these cases, findings prepared by counsel and adopted by the Court were deemed inadequate to support the judgment, and the judgment was reversed or vacated on appeal.

Respectfully submitted,

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Attorneys for Appellants Lorch-Westway Corporation, et al.

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

APPENDIX A

Appellees' Proposed Findings of Fact (App. I) Para. No.	Page	District Court Opinion (App. J) Page	Comparison
6	699	744	Adopted verbatim
7	699-700	744-45	"
8	700	745	"
9	700-1	745-46	"
10	701	746	"
11	701	746	"
12	701	746	"
13	702	747	"
14	702	747	"
15	702	747	"
16	702-3	748	"
17	703	748-9	"
18	704	749	"
19	704-5	749-50	"
20	705	751	"
21	705-6	751-52	"
22	707	752-53	"
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24	708-9	753-55	"
25	709	755	"
26	709	755	"
27	709	756	"
28	710	756	"
29	710	756-57	"
30	710	757	"
31	710	757	"
32	710	757-58	"
33	711	758	"
34	711-12	758	"

Appellees' Proposed Findings of Fact (App. I) Para. No.	Page	District Court Opinion (App. J) Page	Comparison
35	712	758-59	adopted verbatim
36	712-13	759	"
37	713	759-60	"
38	713-14	760-61	"
39	714	761	"
40	714-15	761-62	"
41	715-16	762-63	"
42	716-17	763-64	"
43	717	764-65	"
44	717-18	765	"
45	718	765-66	"
46	718-19	766-67	"
47	719-20	767	"
48	720	767-68	"
49	720	768	"
50	720-21	768	"
51	721	769	"
52	721	769	"
53	721	769	"
54	721	769	"
55	721-22	769-70	"
56	722	770-71	"

Appellees' Proposed Conclusions of Law (App. I) Para. No.	Page	District Court Opinion (App. J) Para. No.	Page	Comparison
1	724	1	771	Adopted Verbatim
2	724	2	771-72	"
3	725	3	772-73	"
4	725-26	4	773-74	Quote added from *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156.
5	726	5	774	Adopted Verbatim
6	726-27	6	775	"
7	727	7	775-76	"
8	727	8	776	Quote added from *Universal Camera Corp. v. NLRB*, 340 U.S. 474; added citation to *Bituminous Material & Supply Co. v. NLRB*, 281 F.2d 363 (8th Cir. 1960).
9	727-28	9	776-77	Adopted Verbatim
10	728	10	777	"
11	728	11	777-78	"
12	728-29	12	778	"
13	729	13	778-79	"
14	730	14	779	"
15	730-31	15	779-80	"
16	731	16	780	"
17	731	17	781	"
18	732	18	781	"
19	732	19	781	"
20	732	20	781-82	"

Appellees' Proposed Conclusions of Law (App. I)		District Court Opinion (App. J)		Comparison
Para. No.	Page	Para. No.	Page	
21	732-34	21	782-84	adopted verbatim
22	734	22	784	"
23	734-35	23	784-85	"
24	735	24	785	"
25	735-36	25	785-86	"
26	736	26	786	"
27	736-37	27	786-87	"
28	737	28	787	"
29	738	29	787-88	Ordering clause only changed.

APPELLANT'S

BRIEF

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

JUL 8 1974
MICHAEL RODAK, JR.

Nos. 73-1055, 73-1069, 73-1070, 73-1071, and 73-1072

BOWMAN TRANSPORTATION, INC., *et al.*,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION

BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Counsel for Bowman Transportation, Inc.

SANDER W. SHAPIRO
JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767

Counsel for Red Ball Motor Freight, Inc.

BRYCE REA, JR.
DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for Johnson Motor Lines, Inc.

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
Washington, D.C. 20006

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

Counsel for Lorch-Westway Corporation, et al.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, and 73-1072

BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., LORCH-WESTWAY CORPORATION, ET AL., AND UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION

BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

OPINIONS BELOW

The opinions of the Three-Judge District Court (App. 1275 *et seq.*; 807 *et seq.*)[1] are reported at 364 F.

[1] "App." refers to the Appendix, Volumes I and II, filed by these Appellants.

Supp. 1239. The report of the Interstate Commerce Commission (App. 101 *et seq.*) is published at 114 M.C.C. 571. The final orders of the Commission (App. 363 *et seq.* and 1271) are not reported.

JURISDICTION

The judgment and opinion of the Three-Judge District Court were entered on September 11, 1973. Appellants United States and Interstate Commerce Commission filed a motion for amendment of judgment on September 17, 1973 (App. 795). On October 4, 1973, the District Court denied the motion. 364 F.Supp. 1266 (App. 807 *et seq.*). Timely notices of appeal were filed (App. 801, 803, 825, 827, 831). By order entered November 13, 1973 (App. 845), the time for docketing this appeal was extended to and including January 8, 1974.

On April 29, 1974, this Court noted probable jurisdiction and consolidated the five appeals. The jurisdiction of the Court to review the District Court's decision on direct appeal rests on 28 U.S.C. §§ 1253 and 2101(b) (1970).

QUESTION PRESENTED

Whether, in reversing the decision of the Interstate Commerce Commission based on a formal adjudicatory hearing, the Three-Judge District Court exceeded its jurisdiction and improperly adopted a novel and unwarranted concept of *de novo* review of administrative action by (1) substituting its judgment for that of the agency charged by law with administering the Interstate Commerce Act and the National Trans-

portation Policy, (2) failing to apply the substantial evidence rule to the findings of the agency and its grants of authority to the three motor carrier Appellants and substituting therefor the clearly erroneous test, under the guise of holding the Commission's findings and conclusions arbitrary and capricious and an abuse of discretion, (3) changing the statutory relationship between hearing examiners and their agency with respect to initial and final decisions, and (4) holding the record "stale" and thus insufficient to warrant any Commission action upon that record upon remand.[2]

---

[2] This represents a consolidation of the following questions stated by the Court in noting probable jurisdiction. These questions are individually answered in the Summary of Argument.

No. 73-1055:

2. Can a Three-Judge District Court lawfully set aside and enjoin an order of the Interstate Commerce Commission granting an extension of a motor carrier certificate on the ground the Court does not agree with the order or may consider the evidence would warrant a different conclusion?

4. Whether Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and Commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration. If so, when does such an administrative action reach that point?

No. 73-1069:

2. Whether in reversing the Commission's decision awarding certificates of public convenience and necessity the District Court employed erroneous standards of judicial review and improperly substituted its judgment for that of the agency.

No. 73-1070:

Whether the Three-Judge Court, in setting aside the administrative agency decision, abdicated or abandoned its judicial function by

(3) failing to give independent judicial consideration and review to the separate grants of authority to the intervening defendant motor carriers;

STATUTES INVOLVED

The following pertinent statutory provisions are set forth in App. 93-99:

1. The National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1, Historical Note (1970).

2. Sections 17(4) and (5) of the Interstate Commerce Act, as amended, 49 U.S.C. § § 17(4) and (5) (1970).

3. Section 207 of the Interstate Commerce Act, as amended, 49 U.S.C. § 307 (1970).

4. Section 7 of the Administrative Procedure Act, 5 U.S.C. § 556 (1970).

5. Section 8 of the Administrative Procedure Act, 5 U.S.C. § 557 (1970).

6. Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706 (1970).

STATEMENT

This case involves the validity of the standards of review applied by a Three-Judge District Court to a decision of the Interstate Commerce Commission. If sustained by this Court, these standards inevitably will expand the scope of review to be applied by Courts of Appeals and Three-Judge District Courts to formal

---

(5) rejecting Supreme Court precedent limiting the Court's scope of review and thereby substituting its judgment for that of the agency charged with the responsibility therefor;

No. 73-1071:

Whether the Three-Judge District Court improperly adopted a novel and unwarranted concept of *de novo* review of Commission decisions and changed the statutory relationship between hearing examiners and their agency with respect to recommended and final decisions.

adjudication by the departments and agencies of the Federal Government.

This appeal seeks reversal of two orders under which the District Court set aside the Commission's grant of three certificates of public convenience and necessity. The District Court invalidated the Commission's findings (1) that the public convenience and necessity required the grant of motor common carrier authority to three applicants (Appellants Bowman Transportation, Inc., Johnson Motor Lines, Inc., and Red Ball Motor Freight, Inc.) to transport general commodities by motor vehicle over regular routes between specified points, generally in the Southeastern and Southwestern areas of the United States, and (2) that existing transportation service between the points involved was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public (including Appellants Lorch-Westway Corporation, et al.).[3]

In an administrative proceeding of nearly 24,000 pages of testimony and approximately 2,000 exhibits, Appellees as Protestants unsucessfully had opposed the Commission grant of certificates to one or more of the three motor common carrier Appellants. The District Court mechanically adopted verbatim the proposed findings and conclusions of Appellees, who were Plaintiffs in the action before that Court, and also denied a Commission motion to remand the case to the agency.

The Agency Proceeding

After over seven years of administrative proceedings, the Commission, on September 6, 1972, made final its

[3]These are 41 of the shippers and receivers of freight which supported the application of Johnson Motor Lines, Inc., before the Commission and which were Intervening Defendants before the District Court (App. 827).

December 30, 1971, award of certificates of public convenience and necessity to Appellants Bowman Transportation, Inc. (Bowman), Johnson Motor Lines, Inc. (Johnson), and Red Ball Motor Freight, Inc. (Red Ball) (App. 1271). The award to Johnson authorized the single line carriage of general commodities between points in its existing 16-state system in the New England, Middle Atlantic, Southeast, and Gulf regions, on the one hand, and, on the other, specified points on proposed routes from New Orleans, La., to Houston, Tex., and from Atlanta, Ga., to Dallas/Fort Worth, Tex. The Red Ball award tied its existing network of routes in 10 Southwestern states to proposed service at such Southeastern cities as Atlanta, Ga., Birmingham, Ala., and Jackson, Miss. The Bowman grant unified its present system in the Eastern regions of the country with proposed service at 7 points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas. 114 M.C.C. 580-582, 584-589, 612-614 (App. 110-112, 114-119, 158-160).

Between December 1964 and July 1965, the Commission received twenty applications from motor common carriers. These sought authority to conduct general commodity operations between points in the Southwest and Southeast, in order to meet the burgeoning transportation needs in and between the two regions. Subsequent to a prehearing conference held in 1966, the Commission ordered that ten of the applications be heard on a consolidated record by two hearing examiners.

Hearings commenced on March 21, 1966, and continued at 8 cities throughout the involved area for 147 days through August 24, 1967. 1,009 witnesses presented oral testimony, including 933 shippers and receivers of freight who supported the applications. 1,989 exhibits were received, including voluminous,

detailed studies depicting traffic flows between the Eastern, Central, Southeastern and Southwestern parts of the United States. Competing rail and motor carriers opposed these applications. The hearing admittedly involved "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. 573 (App. 103).

On November 19, 1969, the two hearing examiners issued a recommended report and order (App. 863 *et seq.*). That decision found that all of the applicants were "capable of performing the operations proposed" (App. 866), but concluded that "the applicants have failed to establish that the present or future public convenience and necessity require the operations proposed" (App. 905).

Although all parties recognized that general commodities were involved, the examiners erroneously considered all applications collectively (*e.g.*, App. 891) and classified the freight into 45 categories (App. 869). In reaching their recommendation, the examiners deemphasized the numerous complaints voiced by the supporting shippers (App. 874) concerning inconsistent and lengthy transit times, inadequate pick-up service, difficulties in tracing, and the handling of loss and damage claims (App. 875-889).

Multiple and voluminous exceptions and replies were filed respecting the initial decision. These included the exceptions of Lorch-Westway Corporation and 40 other shippers, who were permitted to intervene by the Commission. On December 30, 1971, the Commission, Division 1,[4] entered its report and order granting three, and denying the remainder, of the applications. 114

[4] Commission action by a Division thereof is authorized by 49 U.S.C. §17(4)(1970).

M.C.C. 571 *et seq.* (App. 101 *et seq.*).[5]

After a thorough reconsideration and re-evaluation of the evidence, the recommendations of the hearing examiners, and the exceptions and replies thereto, the Commission rejected the examiners' findings and adopted only their "summary of the evidence presented by the protestants [Appellees] as to their authorities, equipment and operations." 114 M.C.C. 575 (App. 105). In reaching its decision, the Commission concluded that the examiners' analysis of the evidence on a commodity basis had resulted in an atomized treatment which did not accurately reflect the needs of the territories and points involved. 114 M.C.C. 591 (App 121). Accordingly, it completely regrouped the "supporting evidence on a geographic basis" in order to obtain "a clearer picture of the supporting witnesses' needs" (*Id.*). The Commission found that "[t]he evidence considered in its entirety is convincing that the additional services . . . will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public." 114 M.C.C. 599 (App. 129).

The Commission's approval of the three applications turned fundamentally upon several correlative findings. First, the agency found that the record as a whole showed widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the Southwest and the Southeast, Eastern

[5]Subsequently, the Commission, upon reconsideration of one of the denials, granted a fourth application, in part. *Jones Truck Lines, Inc., Extension-Atlanta, Ga.*, 117 M.C.C. 586 (1972), currently pending on judicial review in *Campbell Sixty-Six Express, Inc., et al. v. United States*, Civil Action No. 73-Civ-411-S (W.D. Mo.).

seaboard, and Gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature. 114 M.C.C. 601-602 (App. 131-132). It also found that the available transportation service between the points, and to the extent authority theretofore had been granted, was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public. 114 M.C.C. 599-600 (App. 129-130). Finally, the Commission found that the gains to be derived by the public from the three new services outweighed any adverse effect the protestants might experience. 114 M.C.C. 611 (App. 157).

On or about December 30, 1971, petitions for reconsideration of the Commission's decision were filed. On September 6, 1972, the Commission, Division 1, acting as an appellate division, denied reconsideration of the Johnson, Red Ball, and Bowman grants (App. 363). On or about September 21, 1972, petitions were filed under the Commission's General Rule of Practice 101(a)(4), 49 C.F.R. §1100.101(a)(4) (Supp. 1973), requesting the entire Commission to rule and announce that the proceeding involved an issue of general transportation importance. On October 6, 1972, the entire Commission denied those petitions (App. 1271).

The District Court Proceeding

On October 4, 1972, suit was brought in the District Court to set aside the Commission's decision (App. 848). On October 11, 1972, the Three-Judge District Court was designated to hear the action (*Id.*). A hearing was held before the Senior District Judge on November 1, 1972 (App. 371 *et seq.*), who on November 7, 1972, entered a temporary restraining order against the Commission's decision. *Arkansas-Best Freight System,*

Inc. v. United States, 350 F. Supp. 539 (W.D. Ark. 1972).

After the filing of extensive briefs, a hearing was held before the entire Court on July 24, 1973 (App. 453 *et seq.*). Proposed findings of fact and conclusions of law were submitted by the parties on August 16, 1973 (App. 585-738). Twenty-six days later the Court filed its decision, 364 F. Supp. 1239 (App. 1275 *et seq.*), copying in almost its entirety Appellees' submission (App. 697 *et seq.*).[6] The Court's decision contained no specific references to the hearing record but solely to portions of Appellees' proposed findings.[7]

The Court, in effect, adopted the findings and conclusions of the hearing examiners denying the ten applications, and rejected the Commission's findings and conclusions supporting the grant of three of these applications. Further, the Court refused to remand the case to the Commission because the administrative record was allegedly "stale" and "because [since] the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served" thereby. 364 F. Supp. at 1264 (App. 1319).

The Court decided that, even where an agency's findings of fact are supported by substantial evidence on the record, those findings may be "arbitrary, capricious, [or] an abuse of discretion" under Section

[6] There were three insubstantial changes in wording in §'s 4, 8, and 29 of the conclusions of law in the District Court opinion. 364 F.Supp. at 1257, 1258-1259, 1264 (App. 1305-1306, 1308-1309, 1319), which are matched with the same paragraphs as numbered by Appellees in their proposed findings and conclusions (App. 725-726, 727, 737). The Court's opinion, with paragraphs numbered as in Appellees' proposed findings and conclusions, appears at App. 739 *et seq.*

[7] *E.g.*, 364 F.Supp. at 1254, 1255 (App. 1299, 1301).

10(e)(B)(1) of the Administrative Procedure Act, 5 U.S.C. §706(2)(A)(1970). 364 F. Supp. at 1256-1257 (App. 1305). After paying lip service to the "well-settled principle" of "[t]he limited scope of judicial review of the decisions of independent agencies" and to sustaining administrative action "even though it [the Court] might disagree with the agency's conclusions or consider them contrary to the weight of the evidence", the Court proceeded to ignore those principles. 364 F. Supp. at 1256 (App. 1304).

According to the Court, an allegation of arbitrary and capricious action with respect to findings of fact permitted the Court to circumvent the substantial evidence rule and to base its opinion on a weighing of the evidence. Thus, the Court stated:

> "***Since these requirements [of Section 10(e)(B)(1)] are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding . . . where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion." 364 F. Supp. at 1258 (App. 1307).

Thereafter, the United States and the Commission moved the District Court to amend the judgment of September 11, 1973, by remanding the proceeding to the Commission for further action consistent with the Court's opinion (App. 795). In a second opinion entered on October 4, 1973, the District Court denied the motion. 364 F. Supp. at 1266 *et seq.* (App. 807 *et seq.*).

SUMMARY OF ARGUMENT

1. The District Court substituted its judgment with respect to the National Transportation Policy and the

public need for transportation in the Southwest and Southeast areas of the United States for the expert exercise of discretion granted by Congress to the Commission. The Court disagreed with the weight given by the Commission to the evidence and held that the evidence warranted a conclusion different from that reached by the agency. The Court thus refused to follow this Court's precedent that it is for the Commission to appraise the facts, to draw inferences therefrom, to exercise its expert judgment with respect thereto, to interpret the National Transportation Policy, and to decide where lies the public interest, even where the Court may disagree with the agency's ultimate disposition of the proceeding. (No. 73-1055, Question No. 2) (pp. 16-19, *infra*).

2. In its decision the District Court erroneously interpreted and misapplied the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 706 (1970), and thereby exceeded its jurisdiction. The substantial evidence rule was held inapplicable where it is merely alleged that the agency findings of fact are arbitrary, capricious, or an abuse of discretion. The Court therefore reviewed the record as if it had been made by a trial judge without a jury and, in effect, employed the clearly erroneous rule, inapplicable to administrative proceedings. The Court thereby reviewed *de novo* the record and substituted its judgment, as proposed verbatim by Appellees, for that of the agency. If allowed to stand, this decision will enlarge substantially the scope of judicial review prescribed by the Administrative Procedure Act and this Court's precedent thereunder, with consequent change in the relationship between the judiciary and the administrative agencies. As a result, an increased burden will be imposed upon the Courts in their review of agency action. (No. 73-1069, Question No. 2; No. 73-1070, Question No. (5)) (pp. 14-44, 47-49, *infra*).

3. The District Court accorded overwhelming weight to the hearing examiners' report, to override the Commission's decision. Such a result contradicts 5 U.S.C. §557(b) (1970) which provides that, in its final decision, the "agency has all the powers which it would have in making the initial decision." While a reviewing Court must look to an examiner's report as part of the whole record, such a report remains only a part of the whole record. It cannot be used, as here, as a controlling method of negating the Commission's decision. That exceptions were taken to the examiners' conclusions and that the Commission reached different conclusions were disregarded by the Court. Under this novel theory of law, the role of hearing examiners has been exalted to that of final decision, even where, as here, the agency with statutory responsibility in the motor carrier field reaches contrary conclusions. The result of the Court's action is to defeat the letter and the spirit of the Administrative Procedure Act and to nullify the Interstate Commerce Act. (No. 73-1071) (pp. 44-47, *infra*).

4. The District Court failed to defer to the Commission's expert judgment on the issue of the separate grants of authority to Bowman, Johnson, and Red Ball. The Commission properly rejected the examiners' consideration of all ten applications collectively, without the examiners' evaluation of the merits of the separate applications in light of the public need for increased service. The Court rejected the Commission's expert approach, based on established precedent, and reverted to the position of the examiners. (No. 73-1070, Question No. (3)) (pp. 47-52, *infra*).

5. The District Court held that the record in this case was "stale" because the "extensive record dealing with five or six year old facts" could not support the grant of a certificate in 1973 or 1974. No authority

was cited for this proposition. None exists so far as the facts of this case are concerned. By its very nature, an administrative proceeding creates a gap between the time the record is made and closed and final agency action taken. A further gap occurs when the agency action is judicially reviewed. What the Court, in effect, said was that, in Appellees' vigorous pursuit of their administrative and judicial remedies, the passage of time can so age the record that the Appellees' goal of reversing the agency is reached not because their arguments are meritorious but because the record has become "stale". This Court clearly has rejected such a result. Where the Commission decision is issued following extensive hearings, involving a voluminous record, concluded within all time limitations and Commission rules, a Court cannot judicially determine such proceedings to be "stale" as a matter of law. (No. 73-1055, Question No. 4) (pp. 54-58, *infra*).

6. This Court should find, on the record before it and in the Commission's own decision, that substantial evidence supports the agency findings and that the agency conclusions are warranted. Because of the serious misapprehension or gross misapplication of accepted principles of judicial review by the District Court, remand of this case to the lower Court for further review would serve no useful purpose. It would prolong seriously the inadequacy of service found to exist by the Commission. This Court should remand the case to the District Court with directions to affirm the Commission's decision. (pp. 38-60, *infra*).

ARGUMENT

Beyond question the Commission's decision is warranted by the substantial evidence recited in the

decision itself.[8] Indeed, Appellees never seriously have claimed that the Commission's findings were unsupported by substantial evidence. The law is clear, under this Court's precedent, that, where such substantial evidence supports the agency decision, the judicial review function of the Court is ended. Indeed, the District Court's opinion recited material evidence which supported the Commission's conclusion that the public convenience and necessity would be served by the grant of authority to the three Appellant motor carriers. However, the Court refused to evaluate, under the substantial evidence rule, the Commission's findings and conclusions supporting that grant.

The District Court flagrantly disregarded precedent as to when the judicial review function ends. It adopted a novel and unwarranted scope of *de novo* review. In effect, the District Court reviewed the Commission's decision under the clearly erroneous rule which has no application whatsoever to this proceeding. On the mere allegation of Appellees that the Commission's action was arbitrary and capricious and constituted an abuse of discretion, the Court below by-passed the applicable substantial evidence rule of the Administrative Procedure Act and erroneously expanded this Court's decision in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, to apply to formal agency adjudication. If the District Court's revision of heretofore established standards of review is allowed to stand, the relationship between the Courts and administrative agencies and departments of the Federal Government will be drastically altered, and the Courts will become but an extension of administrative adjudication.

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[8] See pp. 38-44, 50-53, *infra*.

I.

THE THREE-JUDGE DISTRICT COURT ERRONEOUSLY ADOPTED A NOVEL AND UNWARRANTED CONCEPT OF DE NOVO JUDICIAL REVIEW IN FLAGRANT DISREGARD OF THE DECISIONS OF THIS COURT.

Section 10(e)(B)(6) of the Administrative Procedure Act (hereafter APA), 5 U.S.C. §706(2)(F)(1970), requires a reviewing Court to

> "(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> ***
>
> "(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court."

The latter standard may only be used where "there is no statutory administrative hearing." *Administrative Procedure Act — Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 39-40 (1946) (hereafter S. Doc. No. 248). See, to same effect, *id.* at 214, 217, 278-280, 326, 370, 378; *Attorney General's Manual on the Administrative Procedure Act* 109-110 (1947) (hereafter Attorney General's Manual). As the Court stated in *Texas Mexican Ry. v. United States*, 250 F. Supp. 946 (S.D. Tex. 1966):[9]

> "The conclusion of the Commission finds support in the record as a whole, even though we might justifiably have made a different choice had the

[9] A Three-Judge District Court sitting in the Western District of Arkansas heretofore has reached a similar conclusion. *Patterson v. United States*, 178 F. Supp. 771, 773-774 (W.D. Ark. 1959).

matter been before us de novo; and, therefore, this Court may not set the order aside." 250 F. Supp. at 950.

Only where a statute provides that the Court "shall review *de novo* the issues presented" does the Court "make an independent determination of the issues." *United States v. First City National Bank of Houston*, 386 U.S. 361, 368.

In this case the District Court reviewed *de novo* the decision of the Commission. Such a method of review was effected under the guise of the arbitrary and capricious standard contained in Section 10(e)(B)(1) of the APA, 5 U.S.C. § 706(2)(A)(1970).

"***The reviewing Court shall –

***

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;"

In resorting to the latter standard of review, the Court nullified, and rejected the application of, the correct APA standard that agency findings shall be set aside under Section 10(e)(B)(5) of the Act, 5 U.S.C. § 706(2)(E)(1970), where

"unsupported by substantial evidence in a case subject to [5 U.S.C.] sections 556 and 557 [Sections 7 and 8 of the APA] . . .;"

The Court thus resorted to the clearly erroneous rule of F.R.C.P. Rule 52(a).[10] See *Willis Shaw Frozen Express, Inc. v. United States*, 256 F. Supp. 257, 264 (W.D. Ark. 1966) ("The court may set aside determinations of the Commission only when clearly erroneous. . . .").

The District Court further erred in rejecting the precedent established by this Court that Commission

[10] "***Findings of fact shall not be set aside unless clearly erroneous. . . .***"

decisions are subject only to a limited scope of review. By applying a broad and novel scope of review, the Court substituted its own judgment for the expert opinion of the Commission, charged by statute with final administrative authority in the motor carrier field. In so doing, the Court refused to recognize the responsibility vested exclusively in the agency to "promote . . . adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers . . . all to the end of developing, coordinating, and preserving a national transportation system . . . adequate to meet the needs of the commerce of the United States." National Transportation Policy, 49 U.S.C. preceding § 1, Historical Note (1970).

That policy is "the yardstick by which the correctness of the Commission's actions will be measured." *Schaffer Transportation Co. v. United States*, 355 U.S. 83, 87-88. This Court there stated:

> "We do not minimize the complexity of the task the Commission faces in evaluating and balancing the numerous considerations that collectively determine where the public interest lies in a particular situation. And *we do not suggest that the National Transportation Policy is a set of self-executing principles that inevitably point the way to a clear result in each case. On the contrary, those principles overlap and may conflict, and, where this occurs, resolution is the task of the agency that is expert in the field.****" 355 U.S. at 92 (emphasis added).

The reviewing Court's "task [is] to scrutinize the Commission's authority, not the substance of this exercise." *American Trucking Associations, Inc. v. Atchison, T., & S. F. Ry.*, 387 U.S. 397, 412. The Commission's informed appraisal of the facts in the

light of the National Transportation Policy must stand if there is evidence to warrant the decision. *McLean Trucking Co. v. United States*, 321 U.S. 67, 86-88.

A. The Court was required, but failed, to apply the substantial evidence rule to the findings of the Commission.

The District Court paid lip service to, but then refused to follow, well-established principles of a limited scope of review. 364 F. Supp. at 1256 (App. 1304). Under those principles, an agency decision will be sustained if it is within the agency's statutory powers and is based on appropriate findings which, in turn, are supported by substantial evidence. If these criteria are met, the reviewing Court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 619-621; *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488; *United States v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 535-536.

This limited scope of review was particularly appropriate where, as here, the District Court and Appellees attacked the exercise of the Commission's authority in the specific area of public convenience and necessity. The extent of the authority which should be granted entails not only a weighing of the evidence but the exercise of an expert judgment on the transportation problems which are involved. *United States v. Carolina Freight Carriers Corp.*, 315 U.S. 475, 489-490; *United States v. Maher*, 307 U.S. 148, 154. As this Court stated in *Interstate Commerce Commission v. Parker*, 326 U.S. 60:

> "Public convenience and necessity is not defined by the statute.***The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. [Citation omitted]. This, of course, gives administrative discretion to the Commission . . . to draw its conclusion from the infinite variety of circumstances which may occur in specific instances.***" 326 U.S. at 65.

Accord, Illinois Central R.R. v. Norfolk & W. Ry., 385 U.S. 57, 66; *United States v. Pierce Auto Freight Lines, supra*, 327 U.S. at 535-536; *United States v. Detroit and Cleveland Navigation Co.*, 326 U.S. 236, 241. An administrative agency is presumed to perform properly its official duties in the absence of clear evidence to the contrary. *Permian Basin Area Rate Cases*, 390 U.S. 747, 767; *Interstate Commerce Commission v. City of Jersey City*, 322 U.S. 503, 512-513.

Rejecting in practice this limited scope of review, the District Court made no attempt to examine the record to determine whether there was substantial evidence to support the Commission's findings. The District Court circumvented the substantial evidence rule, stating, 364 F. Supp. at 1258 (App. 1307):

> "***Since these requirements [Section 10 (e)(B)(1), 5 U.S.C. §706(2)(A)] are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion."

This conclusion, adopted verbatim from Appellees' proposed findings (App. 726), has no basis in law. More importantly, it makes infinite the scope of judicial review applicable to formal adjudication by Federal departments

and agencies. By its very terms, the District Court's standard of review comes into play where the party seeking judicial review, apparently or implicitly, acquiesces that there is substantial evidence to support the agency's findings.[11] The District Court's conclusion here stands for the proposition that, if the party challenging the agency action uses the magic words "arbitrary, capricious or an abuse of discretion," the Court, without more, is authorized to weigh allegedly competing evidence to reach a result different from that of the agency. The District Court should be reversed where, as here, it "misconceives the rationale" of this Court's precedent and, on an alleged principle of law, failed to affirm a decision where "on the record as a whole there is substantial evidence to support agency findings." *Central Hardware Co. v. National Labor Relations Board*, 407 U.S. 539, 547-548.

B. The clearly erroneous rule, in effect adopted by the Court, does not apply to judicial review of administrative decisions after formal hearing on the record.

Under the guise of the arbitrary and capricious standard of review, the District Court substituted the clearly erroneous rule for the substantial evidence rule.[12] The clearly erroneous rule differs from the substantial evidence rule. As the Attorney General has pointed out, *Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 382 (1964):

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[11]Indeed, Appellees' complaint, instituting the judicial review proceeding before the District Court, contains no allegation that Commission findings were unsupported by substantial evidence.

[12]See *In Re Josephson*, 218 F.2d 174, 182 (1st Cir. 1954) (where "abuse of discretion" standard applied, "[o]ne is reminded of the 'clearly erroneous' standard in Rule 52(a)", F.R.C.P.).

> "... [T]he basic difference between the two rules is clear. The substantial evidence rule recognizes that an agency which administers a continuing regulatory program necessarily develops some degree of knowledgeability and expertness in the particular area of regulation.***The substantial evidence rule, in its practical application, recognizes this expertise.
>
> "Under the 'clearly erroneous' rule, a reviewing court treats the findings of an administrative agency as it would the findings of a trial judge. District of Columbia v. Pace, 320 U.S. 701.... That rule recognizes no expertise. Both the appellate court and the trial court consist of judges. There is no general assumption that the trial judge is more expert in the special area than the appellate court judges."

The standard of substantial evidence involves "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620. This standard was adopted in the APA from this Court's decision in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229 ("such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). See S. Doc. No. 145, 76th Cong., 3d Sess. 20 (1940) ("The phrase 'substantial evidence'... has been selected on the basis of the adjudicated cases."); S. Doc. No. 248, *supra*, at 320-321, 414; Attorney General's Manual, *supra*, at 76.

The clearly erroneous rule, on the other hand, only applies by its very terms to "all actions tried upon the facts without a jury", where the trial Court is the fact finder. F.R.C.P. Rule 52(a). As this Court held in *United States v. U.S. Gypsum Co.*, 333 U.S. 364:

> "***It [Rule 52(a)] was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since *judicial review of findings of fact of trial courts does not have the statutory or constitutional limitations on judicial review of findings by administrative agencies* or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' ***" 333 U.S. at 394-395 (footnotes omitted) (emphasis added).

The Court below applied to judicial review of administrative agencies a standard which for thirty-five years has been considered and rejected by Congress and the Courts. That standard is inapplicable to judicial review of the findings of fact of an administrative agency made after a formal adjudicatory hearing. *United States v. U.S. Gypsum Co., supra; Corn Products Refining Co. v. Federal Trade Commission,* 324 U.S. 726, 739 ("The weight to be attributed to the facts proven . . . and the inferences to be drawn from them, are for the Commission to determine, not the Courts."). Even if this were a situation where an administrative agency "made a choice between two fairly conflicting views [of 'pure agency law'] . . . the [reviewing] Court . . should have enforced the [agency's] . . . order." *National Labor Relations Board v. United Insurance Co.,* 390 U.S. 254, 260.

As recommended by the Senate Judiciary Committee in 1939, what became the Logan-Walter Bill provided that

> ". . . any decision of any agency . . . shall be set aside if it is made to appear to the satisfaction of the [reviewing] court (1) *that the [agency's] findings of fact are clearly erroneous;* or (2) that the findings of fact are not supported by substantial evidence. . . ." §5(a), S. 915, as reported in S. Rep. 442, 76th Cong., 1st Sess. 4-5 (1939) (emphasis added).

The phrase "clearly erroneous"

> "...in the review formula...was taken from [F.R.C.P.] rule 52 with respect to the weight to be given to the findings of fact of a trial judge without a jury." S. Doc. No. 145, 76th Cong., 3d Sess. 20 (1940).

However, Congress then rejected application of this concept to review proceedings. The Logan-Walter Bill, H.R. 6324, contained provision only for the substantial evidence rule. H.R. Doc. No. 986, 76th Cong., 3d Sess. 15 (1940). This bill was vetoed by the President. *Id.* at 1.

As drafted following the President's veto, all but one of the bills embodying a proposed Administrative Procedure Act did not provide for the clearly erroneous rule in judicial review of agency adjudication. *Administrative Procedure*, Hearings Before Subcomm. of Senate Comm. on the Judiciary, 77th Cong., 1st Sess. 16-17, 34, 852-853, 1074-1075, 1078-1079 (1941) (hereafter *1941 Hearings*). Section 10(e) of the APA, as enacted or as proposed, contained no provision for application of the clearly erroneous rule.

In 1955 the Second Hoover Commission, upon recommendation of its Legal Task Force, recommended to Congress the substitution of the clearly erroneous rule for the substantial evidence rule. Commission on Organization of the Executive Branch of the Government, *Legal Services and Procedure* 76 (1955); *Task Force Report on Legal Services and Procedure* 215, 217-218, 416 (1955); see Carrow, *Administrative Adjudication: Should Its Role Be Changed?*, 27 Geo. Wash. L. Rev. 279, 281-283, 294 (1959). According to the Task Force Report, *supra*, at 218:

> "***The task force has proposed that the rules of evidence applicable to civil non-jury cases be

> followed hereafter in administrative proceedings conducted by Federal agencies. The task force recommends that findings of fact, based upon formal administrative records, should be set aside if clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."

This proposal, which was not accepted by Congress,

> "***[f]or many courts. . .would undoubtedly constitute a green light to enlarge the scope of review.***" Carrow, *supra*, 27 Geo. Wash. L. Rev. at 299.[13]

For nearly 20 years Congress has considered and consistently rejected this proposal to change the scope of judicial review in the APA. Though embodied in a proposed Code of Administrative Procedure drafted by the American Bar Association,[14] no such change was

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[13]The Interstate Commerce Commission strongly opposed this provision. *Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 93, 437 (1964). So did the Association of Interstate Commerce Commission Practitioners, 23 I.C.C. Prac. J., Nov. 3-4, 1955 at 46:

> "The effect of the proposed change is fundamental. It would require the court to substitute its judgment with respect to the facts and the discretion exercised by the agency for that of the agency.***"

[14]*Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 89th Cong., 1st Sess. 99 (1965). Hearings on a revised APA commenced before the Senate Judiciary Subcommittee on Administrative Practice and Procedure in July 1959, see *Administrative Procedure Legislation*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 86th Cong., 1st Sess. (1959). In 1957 the American Bar Association had proposed a new Code of Federal Administrative Procedure to replace the APA, which embodied the clearly erroneous rule. S. 1070, 86th Cong., 1st Sess. (1959); S. 1887, 87th Cong., 1st Sess. (1961); see Benjamin, *A Lawyer's View of Administrative Procedure — The American Bar Association Program*, 26 Law & Contemp. Prob. 202, 223-34 (1961).

made in the judicial review provisions of the APA, despite extensive consideration of the subject matter. *E.g.*, S. 1663 and S. 2335, 88th Cong., 1st Sess. (1963); see *Administrative Procedure Act*, Hearings Before the Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 40, 283, 286-287, 298, 313, 382, 401, 451, 670 (1964).

C. The substantial evidence rule precludes exclusive application of the arbitrary and capricious standard to agency findings based on such evidence.

Nowhere did Appellees or the District Court question whether the specific findings contained in the Commission's decision were supported by substantial evidence. Noting that "the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion", the Court circumvented the substantial evidence rule, under Section 10(e)(B)(5) of the APA, 5 U.S.C. §706(2)(E), and applied only the arbitrary and capricious rule, under Section 10(e)(B)(1) of the statute, 5 U.S.C. §706(2)(A). Thus, the Court was able to find "no rational basis" for the weight given by the Commission to certain exhibits and testimony, nor could the Court "discern any rational basis" for certain of the Commission's conclusions. 364 F. Supp. at 1259-1262 (App. 1310-1316). This led to the inevitable conclusion, as worded by Appellees (App. 737), that "the findings and conclusions of the Division are arbitrary, capricious, and without rational basis". 364 F. Supp. at 1264 (App. 1319).

The Court claimed that the Commission's decision was based upon "subordinate findings that can be supported

only by a consideration of portions rather than the entire record". 364 F. Supp. at 1259 (App. 1309). But, in every adversary proceeding where factual issues are contested, conflicting evidence will be involved. In effect, the District Court held that all the evidence – not just substantial evidence – must support the Commission's findings of fact and its conclusions based thereon.

Contrary to that rationale, the statute only requires that the agency base its findings upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229. Findings based upon substantial evidence therefore can be contrary to other evidence in the record. As this Court stated in *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620:

> "***... [T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.***"

1. ***The legislative history of the Administrative Procedure Act does not support the District Court decision.***

The legislative history of the APA does not support the District Court's construction of the APA. As considered by the Congress in 1941, S. 674, 77th Cong., 1st Sess., "Federal Code of Administrative Procedure", provided in §311(e) thereof, in relevant part, *1941 Hearings, supra*, at 16-17:

> "(e) SCOPE OF REVIEW. – As to the findings, conclusions, and decision in any case, the reviewing court ... shall consider and decide ...

> all relevant questions of . . . (4) findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence; and (5) administrative action otherwise arbitrary or capricious. . . ."

S. 675, 77th Cong., 1st Sess., contained a substantially similar provision in §805(4) and (5) thereof. *Id.* at 34. On this subject, the following colloquy occurred between Senator Joseph C. O'Mahoney, a member of the Judiciary Committe, and the late E. Blythe Stason,[15] then Dean of the University of Michigan Law School, *1941 Hearings, supra,* at 1359-60:

> "Dean Stason. May I put it this way: *We don't have any thought of trying to work into this bill a technique of weighing the testimony and giving the court the power to reverse fact decisions if it finds the weight of the testimony running counter to the administrative order.* ***
>
> "Senator O'Mahoney. *But I take it that it is not your desire to go so far as to enable the court to substitute its findings, inferences, and conclusions, for the reasonable findings, inferences, and conclusions of the agency?*
>
> "Dean Stason. *That is absolutely correct. The court should not be given the privilege of going that far. The court should look at the whole record and if it feels that a reasonable man, acting reasonably, might have reached the decision which was reached by the administrative agency, it should let the decision alone."* (emphasis added)

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[15] Dean Stason was a member of the minority of the Attorney General's Committee on Administrative Procedure which proposed a detailed "Code of Standards of Fair Administrative Procedure." *Administrative Procedure in Government Agencies,* S. Doc. No. 8, 77th Cong., 1st Sess. 203, 217 (1941) (hereafter S. Doc. No. 8). The code was the progenitor of the bills then being considered by the Senate Committee.

Neither the Report of the Attorney General's Committee nor the legislative history of the bills, which became the APA after World War II, contain any support for the District Court's conclusion that the evidence can be reviewed under other than the substantial evidence rule where a party claims agency findings and conclusions were arbitary and capricious. As the Attorney General's Committee stated, Sen. Doc. No. 8, *supra*, at 88:

> "***The question whether the administrative finding of fact rests on substantial evidence . . . is really a question of law, for a finding not so supported is arbitrary, capricious, and obviously unauthorized."

In other words, the reviewing Court first must determine the substantiality of the evidence underlying the agency's findings. Otherwise, the Court would "determine independently which way the evidence preponderates," thus turning "administrative tribunals . . . into little more than media for transmission of the evidence to the courts." *Id.* at 91. Judicial review is expected "to *check* – not to *supplant* – administrative action. Review must not be so extensive as to destroy the values – expertness, specialization, and the like – which . . . were sought in the establishment of administrative agencies." *Id.* at 77 (emphasis in original). In considering proposed Section 10(e) of the APA, the Senate Judiciary Committee referred to the foregoing statements of the Attorney General's Committee. S. Doc. No. 248, *supra*, at 39.

> "Subsection (e) . . . seeks merely to restate the several categories of questions of law subject to judicial review. Each category has been recognized . . . . The several categories, constantly repeated by courts in the course of judicial decisions or opinions, were first established by the Supreme

Court as the minimum requisite under the Constitution. . . ."

The substantial evidence rule governs the conduct of agency proceedings and the review of agency decision where a record is made by formal adjudication under Section 7(c) of the APA, 5 U.S.C. §556(d):

> "***A sanction may not be imposed or . . . order issued except on consideration [by the agency] of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.***"

This language was inserted in the section by the House, after the Senate used the language, "relevant, reliable, and probative evidence." S. Doc. No. 248, *supra*, at 30, 207-208, 287. "***Obviously, the agency will proceed in accordance with the evidence which it finds reliable, probative, and substantial – there is no reason why the bill should not say so." *Id.* at 287, fn. 18.

Section 10(e) of the APA, 5 U.S.C. §706, requires the reviewing court to ascertain, in a case such as this, whether there has been compliance with the substantial evidence rule under Section 7(c) of the statute. The judicial review provisions of the APA, like other provisions of the Act, "are closely knit", S. Doc. No. 248, *supra*, at 194. The Act "is designed to operate as a whole, and. . .its provisions are interrelated." *Id.* at 216; see, to the same effect, 251, 305. If the substantial evidence rule embodied in two separate provisions of the APA has any statutory meaning and if the statute is designed to operate as a whole, then the arbitrary and capricious standard of judicial review never was intended to afford a judicial means of by-passing the substantial evidence rule. The error committed by the District Court has been well described by this Court in *Consolo v. Federal Maritime Commission, supra:*

"***In effect, the standard of review applied and articulated by the Court of Appeals in this case was that if 'substantial evidence' . . . supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act." 383 U.S. at 618-619 (footnotes omitted).

2. *Overton Park does not support the District Court decision.*

The Court below relied principally upon this Court's decision in *Citizens To Preserve Overton Park v. Volpe*, 401 U.S. 402, for its erroneous conclusion that the substantial evidence rule can be nullified by use of the arbitrary and capricious rule. The District Court stated, in part, 364 F. Supp. at 1257 (App. 1305):

"4. In Overton Park, supra, the court pointed out that in determining whether an agency decision was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,' the reviewing court 'must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.' 401 U.S., at 416.***"

The lower Court's reliance is misplaced. Indeed, the words quoted from this Court's decision are out of context.[16]

Overton Park involved judicial review of an announcement by the Secretary of Transportation that he

[16]Based verbatim on Appellees' proposed findings and conclusions (App. 725). *Cf. First National Bank of Fayetteville v. Smith*, 365 F. Supp. 898, 902-903 (W.D. Ark. 1973), *appeal pending* (Nos. 74-1032 and 74-1050, argued June 13, 1974, 8th Cir.), where the Senior District Judge for the Western District of Arkansas applied this Court's holding in *Overton Park* to agency adjudication effected without a formal hearing.

had approved the route and design of a highway. The announcement was not

> "***. . . accompanied by a statement of the Secretary's factual findings. He did not indicate why he believed there was no feasible and prudent alternative route or why design changes could not be made to reduce the harm to the park." 401 U.S. at 408.

For the standard of review of that administrative action, according to the Court,

> "***. . . we must look to §706 of the Administrative Procedure Act, which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet six separate standards. In all cases agency action must be set aside if the action was 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements. *** In certain narrow, specifically limited situations, the agency action is to be set aside if the action was not supported by 'substantial evidence.' And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was 'unwarranted by the facts.' 5 USC §§706(2)(E), (F). . . .
>
> ***
>
> "Review under the substantial evidence test is authorized only. . .when the agency action is based on a public adjudicatory hearing. See 5 USC §§556, 557 . . . . [T]he only hearing that is required by either the Administrative Procedure Act or the statutes regulating the distribution of federal funds for highway construction is a public hearing conducted by local officials for the

purpose of informing the community about the proposed project and eliciting community views on the design and route. *** *The hearing is nonadjudicatory, quasi-legislative in nature. It is not designed to produce a record that is to be the basis of agency action – the basic requirement for substantial-evidence review.****" 401 U.S. at 414-415 (emphasis added).

This Court did not hold in *Overton Park* that the substantial evidence rule could be ignored in the case, as here, of contested agency adjudication by resort to the arbitrary and capricious rule. The latter standard was applicable in *Overton Park* because the agency adjudication was made informally, without the kind of formal record required by Sections 7 and 8 of the APA, 5 U.S.C. §§556, 557. *See Camp. v. Pitts*, 411 U.S. 138, 141-142. It is clear from the *Overton Park* decision that, if the provisions of Sections 7(c) and 10(e)(B)(5) of the APA, 5 U.S.C. §§556 and 706(2)(E), are to have any applicability to formal agency decision, *see Weinberger v. Hynson, Wescott & Dunning*, 412 U.S. 609, 622, fn. 19, the arbitrary and capricious standard in Section 10(e)(B)(1), 5 U.S.C. §706(2)(A), cannot be used to bypass the substantial evidence rule.

Indeed, if the agency findings are supported by the substantial evidence on the whole record, the findings, *ipso facto*, cannot be arbitrary, capricious, or an abuse of discretion. Thus, under *Overton Park*:

"The [reviewing] court is authorized to hold a trial de novo in two instances. First, it may redetermine facts originally found in an adjudicatory action if the agency used inadequate factfinding procedures. Second, the court may find facts 'when issues that were not before the agency are raised in a proceeding to enforce nonadjudicatory agency action.' [401 U.S. at 415].

"*The 'substantial evidence' test affirms agency action if reasonably supported by the record.* It

is to be used 'only when the agency action is taken pursuant to a rulemaking provision . . . or when . . . based on a public adjudicatory hearing.' [401 U.S. at 414].

> *"In all other cases, agency action will be set aside only if it is unconstitutional, outside the scope of agency authority, or 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law.'* This was the standard of review applied in Overton Park." McCabe, *Recent Developments in Judicial Review of Administrative Actions: A Developmental Note*, 24 Adm. L. Rev. 67, 95 (1972) (emphasis added).

See, to the same effect, Note, *Recent Changes in the Scope of Judicial Control over Administrative Methods of Decision Making*, 19 Ind. L. J. 118, fn. 1 (1973).

3. Other cases upon which the District Court relied do not support its decision.

The other cases upon which the District Court relied do not support its holding. 364 F. Supp. at 1256-1257 (App. 1305).[17] The partial quotation by that Court from *Columbia Shippers & Receivers Ass'n, Inc. v. United States*, 301 F. Supp. 310, 319-320 (D. Del. 1969), does not support the lower Court's conclusion that the application of the substantial evidence rule to agency findings of fact, made after formal adjudication, can be overridden by resort to the arbitrary and capricious rule. In *Columbia Shippers*, the Court applied the arbitrary and capricious rule to a Commission conclusion of law.

> "Turning next to the Commission's determination that Columbia's practice of co-loading with other non-profit shippers' associations does not contravene the Act, *this issue being primarily a legal rather than a factual one*, the Court must apply, in addition to the 'substantial evidence' test generally

[17] Copied from Appellees' proposed findings (App. 725).

applicable to this action, the standard of review set forth at 5 U.S.C. §706(2)(A):

> " '***the reviewing court shall
>
> ***
>
> " ' (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> " ' (A) arbitrary, capricious, an abuse of discretion, or *otherwise not in accordance with law.'*

Accordingly, the Court's focus on review is whether the evidence and the law will support the conclusion that Columbia's practice of co-loading with other non-profit shippers' associations does not bring Columbia within the terms of the provisions regulating freight forwarders. . . ." 320 F. Supp. at 319-320 (emphasis added).

In *Columbia* there was no factual dispute on the issue of co-loading. This was the question to which the Court addressed itself in that part of the opinion relied upon by the District Court in this case. The *Columbia* Court concluded that, as a matter of statutory construction, the practice of co-loading was not an activity "subject to regulation" under the Interstate Commerce Act. 301 F. Supp. at 321. This was an issue of law to which the standard of 5 U.S.C. §706(2)(A) applied. It was not an issue of fact controlled by the substantial evidence rule of 5 U.S.C. §706(2)(E).

None of the other authorities, cited by Appellees and relied upon by the District Court, support its decision. None of them involved the substitution of the arbitrary and capricious rule for the substantial evidence rule in reviewing an agency decision based upon a formal hearing on the record.[18]

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[18] *Eastern Central Motor Carriers Ass'n v. United States*, 239 F.Supp. 591, 594, 601 (D.D.C. 1965) (no fact issues involved; no rational basis for Commission failure to require "full

Indeed, *Mitchell Bros. Truck Lines, Inc. v. United States*, 225 F. Supp. 755 (D. Ore. 1963), *aff'd per curiam*, 378 U.S. 125, supports the contrary. Carefully distinguishing between the different standards of review applicable to the facts and the law, the Court stated:

> "We have carefully considered the other points and contentions made by plaintiff. The rulings of the Commission thereon were neither arbitrary nor capricious. *The Commission's findings, on each point raised by plaintiff, are supported by substantial evidence. To consider the weight of that evidence or the soundness of the reasoning by which the Commission reached its conclusions, is outside the province of this Court.* ***" 255 F. Supp. at 760 (emphasis added).

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production of evidence" as to costs in rate-making proceeding); *Campbell Sixty-Six Express, Inc. v. United States*, 258 F.Supp. 529, 532, 535 (W.D. Mo. 1966) (there being "no material factual issues in this case," substantial evidence rule was not involved; "facts as found . . . do not supply any rational basis for the [legal] conclusion that the intervenor is now 'actually' in competion with these plaintiffs"); *Nashua Motor Express, Inc. v. United States*, 230 F. Supp. 646, 648, 650 (D.N.H. 1964) (in a case where "precise facts . . . are not at all clear", conclusions leaped to by Commission not supported by "requisite subordinate findings"); *Heavy-Specialized Carriers Conference v. United States*, 231 F.Supp. 968, 970 (E.D.Mo. 1964) (Commission "interpretation of a certificate issued by the ICC is properly with the ICC and not the courts"; hearing transcript supports factual findings); *Youngblood Truck Lines, Inc. v. United States*, 221 F. Supp. 809, 819 (W.D.N.C. 1963) ("Commission's findings of fact are supported by substantial evidence; . . . its conclusions of law are free of error"); *Omaha Grain Exchange v. United States*, 194 F. Supp. 929, 934, 936 (D. Neb. 1961) (in rate-making proceeding, substantial evidence rule applied to facts and abuse of discretion rule applied to legal conclusions; Commission order affirmed); *Stott v. United States*, 166 F. Supp. 851, 855, 856, 858-859 (S.D.N.Y. 1958) (Commission order approving exchange ratio in railroad merger affirmed; "substantial evidence" rule applied to facts; no error of law in Commission conclusions).

II.

IN ITS ERRONEOUS METHOD OF REVIEW, INVOLVING VERBATIM ADOPTION OF APPELLEES' PROPOSED FINDINGS AND CONCLUSIONS, THE DISTRICT COURT COMMITTED SUBSTANTIAL ERRORS.

In weighing the evidence under an improper standard of review, the Court, by the verbatim adoption of Appellees' proposed findings and conclusions, committed further errors of fact and law.[19] The Court below "missed the very essence of the judicial function in this case – the actual adjudication of the issues of law and fact." *Ayrshire Collieries Corp. v. United States*, 331 U.S. 132, 138. The guidelines laid down by this Court in *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, were not followed:

> "***Those [District Court] findings, though not the product of the workings of the district judge's mind, are formally his. . . .*** Those drawn with the insight of a disinterested mind are, however, more helpful to the appellate court.*** Moreover, these detailed findings were 'mechanically adopted' . . .and do not reveal the discerning line for decision of the basic issue in the case.***" 376 U.S. at 656-657.

Here, the District Court did not even "pick and choose and temper and select those portions [of findings and conclusions proposed by all parties] which better fit its own concept of the case." *Bradley v. Maryland Casualty Co.*, 382 F.2d 415, 423-424 (8th

[19]The submission of proposed findings and conclusions is a practice rarely encountered before an appellate tribunal.

Cir. 1967). Indeed, the review provided in this case hardly comports with the kind of review envisioned by Congress under 28 U.S.C. §2325.[20] The District Court's review was a clear example of the situation where ". . . the courts . . . substitute their or *counsel's discretion* for that of the Commission [which] is incompatible with the orderly functioning of the process of judicial review." *Burlington Truck Lines v. United States*, 371 U.S. 156, 169 (emphasis added).[21]

A. Substantial factual errors were committed by the Court in its de novo review of the record.

The District Court adopted erroneous findings of fact proposed by Appellees. Some more egregious examples of such errors follow. They should demonstrate to this Court the unwarranted standard of review used by the District Court.

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[20]The procedure followed by the Court below has been condemned by the other Circuits. The continuation of Three-Judge District Court review of Commission decisions also has been questioned. Burger, C.J., *Report on the Federal Judicial Branch*, 94 S. Ct. 3, 5 (1973); Staff of Senate Comm. on the Judiciary, 93d Cong., 1st Sess., Judicial Review of Decisions of the Interstate Commerce Commission 2-3 (Comm. Print 1973) ("The Burden of Three-Judge Courts"); see *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 128-129; *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 92-93 (dissent by Frankfurter, J.); *Phillips v. United States*, 312 U.S. 246, 250.

[21]*Accord, In Re Las Colinas, Inc.*, 426 F.2d 1005, 1010 (1st Cir. 1970), *cert. denied*, 405 U.S. 1067; *United States v. Forness*, 125 F.2d 928, 942 (2d Cir. 1942), *cert. denied*, 316 U.S. 694; *Roberts v. Ross*, 344 F.2d 747, 751 (3d Cir. 1965); *Featherstone v. Barash*, 345 F.2d 246, 251 (10th Cir. 1965); *Chicopee Manufacturing Corp. v. Kendall Co.*, 288 F.2d 719, 724-725 (4th Cir. 1961), *cert. denied*, 368 U.S. 825.

Transit Studies.[22] The Court stated that "[t]he pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. . .", 364 F. Supp. at 1250 (App. 1293). Noting that the Appellees' studies "constituted the most important part of [their] evidence," 364 F. Supp. at 1259 (App. 1310), the Court castigated the Commission for acting "*ex mero motu*" in finding that Appellees' transit time studies "were entitled to little weight," thereby "depriving . . . [them] of any opportunity to defend their propriety or correct the alleged deficiencies". 364 F. Supp. at 1252 (App. 1295).[23] The record shows that Appellant Johnson challenged Appellees' studies in its March 24, 1970 exceptions (pp. 25-27) and in its reply dated August 16, 1972, to Appellees' petitions for reconsideration of the Commission's decision. The Commission did not act on its own motion.

In addition, the Court criticized the Commission for subjecting the Appellees to a "changed standard" with regard to transit time studies, which they were given no opportunity to meet. 364 F. Supp. at 1260 (App. 1312). However, the Commission has on several occasions accorded greater weight to transit studies of disinterested public witnesses than to studies of protestants performed for short periods when faced with the possibility that competitive service might be authorized. *Strickland Transportation Co., Inc., Exten-*

[22]Transit studies generally abstract shipping document data measuring the time freight was in transit from its origin to its ultimate destination in single line service or from its origin to point of interchange in joint line service. A shipment transported in "single line service" i originated and delivered by the same carrier. When transported in "joint line service", it originates on the line of one carrier and is delivered on the line of another.

[23]This is the same as Appellees' proposed finding (App. 715).

sion – Louisiana Routes, 77 M.C.C. 655, 663 (1958), *sustained sub nom., T.S.C. Motor Freight Lines, Inc. v. United States*, 186 F. Supp. 777, 791 - 792 (S.D. Tex. 1960); *Braswell Motor Freight Lines, Inc., Extension-Atlanta*, 100 M.C.C. 482, 493-494 (1966), *rev. sub nom., Dixie Highway Express, Inc. v. United States*, 268 F. Supp. 239 (S.D. Miss. 1967), *rev. sub nom., United States v. Dixie Highway Express*, 389 U.S. 409 (ICC affirmed).

Similarly, the Court rebuked the Commission for its alleged failure to consider recently-issued single line authorities as a part of the total competitive situation. 364 F. Supp. at 1253-1254 (App. 1299). The Commission's report expressly discussed those authorities and took them into account in deciding whether, and to what extent, the public convenience and necessity required authorization of additional service.[24] 114 M.C.C. at 574-576, 585-586, 600, 611, 627, 631 fn.6, 634, 759, 762, 764, 771-772, 777, 779, 782, 784, 792 (App. 104-106, 115-116, 130, 157, 173, 177 fn. 6, 180, 321, 324, 326, 333-334, 339, 341, 344, 346, 354).

Conclusions 12-18 of the District Court clearly reflect the Court's misunderstanding of the Commission's treatment of transit studies presented by Applicants, shippers, and Protestants. 364 F. Supp. at 1259-1261 (App. 1310-1314). While the Court stated that the Commission compared the studies presented by Applicants with those presented by Protestants, 364 F. Supp. at 1259-1260 (App. 1310-1311), such was not the case. The Commission only compared the transit time studies of supporting shippers with those of Protestants, on the issue of the adequacy of existing service. 114 M.C.C. 599 (App. 129). On the other hand,

[24]See also pp. 18-19 and App. C, Jurisdictional Statement, Bowman Transportation, Inc., No. 73-1055.

the Commission considered Applicants' transit studies solely on the question of the feasibility of their proposed operations. 114 M.C.C. 611 (App. 157).

The Court also erroneously stated that the shippers' studies " 'comprised only a *few* shipments made over a very extensive period of time,' whereas all protestants' studies included *all* shipments handled during the periods covered." 364 F. Supp. at 1251 (App. 1294) (emphasis in original). This phrase is a partial quotation taken out of context from the examiners' decision, which read in full: "In other instances [the shippers' studies] comprised only a few shipments made over a very extensive period of time; *and in some instances the bills represented substantially all shipments in a given period between certain points or areas*" (App. 876-877) (emphasis added). Only 2 carriers presented exhibits concerning movements prior to the notice of hearing. Seventy-eight of the shippers supporting the applications sponsored exhibits which covered movements in 1965, and 5 covered movements in 1964.

Inadequate Service. The Court conceded that, according to the examiners, "[m]ost shippers generally expressed dissatisfaction with inconsistent and excessive transit time" and "expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points. . . ." 364 F. Supp. at 1245-1246 (App. 1283).[25] By themselves, these facts provide the substantial evidence for the Commission's

[25]A compilation of the examiners' findings with respect to inadequate service appears as Exhibit D to the Brief of Appellant Lorch-Westway Corporation et al. before the District Court.

findings of inadequate service. 114 M.C.C. 596-598 (App. 126-128).

The decision of the District Court requires the Commission to accord equal weight (1) to evidence of defects in the operations of an applicant for a certificate and (2) to evidence of inadequate service by a protestant to the application. 364 F. Supp. at 1252 (App. 1296-1297). The Commission repeatedly has rejected this requirement. *Spector Freight System, Inc., Extension–Whitley County, Indiana*, 111 M.C.C. 889, 893 (1970); *East Texas Motor Freight Lines, Inc., Extension–Mississippi and Louisiana Points*, 115 M.C.C. 122 (1972). Indeed, one of the Appellees was certificated during the course of this case notwithstanding its failure to accept shipments required to be transported by its existing certificates. *Campbell Sixty-Six Express, Inc., Extension*, 108 M.C.C. 80, 81 (1968).

Exceptions to Examiners' Report. The Court accepted Appellees' claim that, "applicants [Appellants] had not challenged any specific findings of the Examiners . . ." and that Appellants failed to challenge the accuracy of the examiners' findings respecting the testimony of the public witnesses. 364 F. Supp. at 1250 (App. 1292). Appellant motor carriers did except to certain of the examiners' findings, as well as to their conclusions. For example, Johnson's exceptions claimed that the examiners "failed to fairly consider, evaluate, and make essential findings with respect to the public witness testimony" (Exceptions, Mar. 24, 1970, p. 14). Bowman's exceptions stated that the examiners "erred in considering all ten applications collectively", "failed

to give effect to multiple complaints", "grouped witnesses according to commodities", based their report on broad generalities without specific findings, and considered testimony only in relation to commodities shipped to the exclusion of territories and points involved. (Exceptions, Mar. 10, 1970, pp. 13-23). Shippers excepted to major conclusions of the examiners which embodied subordinate findings of fact. (Exceptions, Mar. 24, 1970, pp. 22-23).[26]

Shippers' Exceptions. The Court found that "shippers' contentions were more political than judicial". 364 F. Supp. at 1255 (App. 1302). The agency "should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues". 364 F. Supp. at 1263 (App. 1318).

The initial exceptions filed by Shippers March 24, 1970, related to the examiners' findings concerning anti-trust matters and their rejection of the public need for improved and expanded service. Supplementary exceptions filed August 20, 1971, updated the initial filing but were never accepted for the record by the Commission. 114 M.C.C. at 577 (App. 107). That "competition is our fundamental national economic

[26]Indeed, the Commission can review error in a hearing examiner's decision without exception with respect thereto. Section 8(b) of APA, 5 U.S.C. §557(b) (1970); ICC Rule of General Practice 97, 49 C.F.R. §1100.97 (Supp. 1973).

policy," *United States v. Philadelphia National Bank*, 374 U.S. 321, 372, is not a political issue. Exceptions based upon specific findings and conclusions of the examiners hardly involve "new" issues.

B. Substantial legal errors were committed by the Court in its de novo review of the record.

Role of Hearing Examiners. The District Court accorded overwhelming weight to the examiners' report, to override the Commission's decision. 364 F. Supp. at 1245-1250 (App. 1282-1291). Such a result contradicts both statute and case law.

The hearing before the examiners was conducted as a contested proceeding on the record pursuant to Section 205(c), (d), and (e) of the Interstate Commerce Act, 49 U.S.C. §305(c), (d), (e) (1970). A hearing involving the issuance of certificates of public convenience and necessity under Section 207 of that Act, 49 U.S.C. §307 (1970), is a hearing on the record subject to the provisions of the APA. *Minneapolis & St. Louis Ry. v. United States*, 361 U.S. 173, 192.

The report of the examiners was solely an initial decision pursuant to Sections 7 and 8 of the APA, 5 U.S.C. §§556 and 557 (1970). Under the latter section:

> "(b)***On appeal from . . . the initial decision [of hearing examiners], the agency has all the powers which it would have in making the initial decision . . .***"

Under this statute, as the Senior District Judge conceded in granting a temporary restraining order, "[t]he Commission is not bound by the findings of the

hearing officers and is free to reach conclusions upon the evidence contrary to those of its examiners." *Arkansas-Best Freight System, Inc. v. United States,* 350 F. Supp. 539, 544 (W.D. Ark. 1972).

The relationship between the examiners and the Commission was not the same relationship which existed between the Commission and the District Court. The Commission exercises all of the authority conferred upon it by statute. It can properly substitute its own judgment for the judgment of the examiner and itself reach an initial decision. The power of decision remains in the agency under 5 U.S.C. §557(b) and not in the examiner. 2 K. Davis, *Administrative Law Treatise* §10.04 (1958, Supp. 1970). "The Commission is not bound by the examiner's conclusions. Rather, the Commission is free to make its own independent determinations." *Frozen Food Express, Inc. v. United States,* 301 F. Supp. 1322, 1324 (N.D. Tex. 1969).

In *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474, 493, this Court held that the examiner's decision is only part of the whole record which the Court must review to determine if there is substantial evidence to support the Commission's decision. This holding was further explained in *Federal Communications Commission v. Allentown Broadcasting Corp.*, 349 U.S. 358.

In that case this Court reversed a Court of Appeals' decision which held that an examiner's findings could not be overruled by the agency unless there was a "'very substantial preponderance in the testimony as recorded.'" 349 U.S. at 364. The Supreme Court stated that the FCC could not be limited to the "clearly erroneous" rule embodied in Rule 52(a), F.R.C.P., when reversing decisions of the examiner. The statute gave to the Commission, not to the examiner, the power to rule on the facts and the law. Therefore, the

relevant inquiry for the Courts was whether there was substantial evidence on the record as a whole to support the Commission's decision. 349 U.S. at 364-365.

In *Lorain Journal Co. v. Federal Communications Commission*, 122 U.S. App. D.C. 127, 351 F.2d 824 (1965), *cert. denied*, 383 U.S. 967, the petitioners complained that the FCC, in reversing the examiners' findings, did not give sufficient weight to the examiners' decision. The Court stated:

> "***But their [examiners'] authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous, FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364 . . . (1955). *The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance.*" 122 U.S. App. D.C. at 131, 351 F.2d at 828 (emphasis added).

Thus, the Court held that it must sustain the Commission's decision if supported by substantial evidence, "even though there is also the contrary conclusion of substantial evidence to support the examiners". *Id. Accord, Towne Services House Goods Transportation Co. v. United States*, 329 F. Supp. 815, 820 (W.D. Tex. 1971).

While a reviewing Court must look to the examiner's report as part of the whole record, such a report remains only a part of the record. It cannot be used, as here, as a method of negating the Commission's decision. Under the novel theory of law adopted by the District Court, the role of hearing examiners has been exalted to that of final decision, even where, as here, the agency with statutory responsibility in the motor

carrier field reaches contrary conclusions. The result of the Court's action is to nullify the letter and the spirit of the Administrative Procedure Act and the Interstate Commerce Act.

Opportunity to Remedy Service Deficiencies. The District Court copied some of the examiners' findings with respect to evidence of inadequate existing service. The Court also adopted the position of the examiners that improvement of existing services first should be made by " 'the exercise of more diligence and care by the existing carriers and shippers'." 364 F. Supp. at 1249 (App. 1290). In effect, the Court thus held that the Commission must grant existing carriers an opportunity to remedy their own deficiencies before authorizing proposed service by other carriers. This is squarely contrary to *United States v. Dixie Highway Express, Inc.*, 389 U.S. 409, which held that:

> "The District Court erred in holding that it is the invariable rule of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and necessity pursuant to the statute. The Commission's power is not so circumscribed.***" 389 U.S. at 411.

Adverse Economic Consequences to Appellees. The examiners found a "very serious economic effect which the *10* applications *collectively* may have upon existing carrier services" (App. 889) (emphasis added). The Commission evaluated each of the eight then remaining applications and reached the conclusion that the public interest warranted the grant of three applications. 114 M.C.C. 599-611, 615-622 (App. 131-157). The District Court ignored this evaluation by the agency. It found that Appellees would be adversely affected by the grant

of three applications, disregarding the fact that the examiners, upon whose report the Court chiefly relied, had found such adverse effect only if all ten applications were granted. 364 F. Supp. at 1262 (App. 1316-1317).

While the Commission "should consider the public interest in maintaining the health and stability of existing carriers", *United States v. Dixie Highway Express, Inc.*, 389 U.S. 409, 411, the fact that a proposed service may cause existing carriers to lose considerable traffic and the income therefrom, *Atlanta-New Orleans Motor Freight Co. v. United States*, 197 F. Supp. 364, 370 (N.D. Ga. 1961),

> "...has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. ***
>
> " 'Competition among public carriers may be in the public interest and the carrier first in business has no immunity against future competition. [Citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity may be served by the issuance of a certificate to a new competitor.' "

In this case the Commission specifically considered and correctly evaluated the adverse effect of the three grants of authority on existing carriers, 114 M.C.C. at 601-602 (App. 131-132):

> "Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the

existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, . . . we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson."

III.

THE CASE SHOULD BE REMANDED TO THE DISTRICT COURT WITH DIRECTIONS TO AFFIRM THE COMMISSION'S ORDER.

In its order refusing to remand the case to the Commission, the District Court stated that:

> "If this were to be done, the Commission would have before it an extensive record dealing with five and six year old facts. It is apparent, as a matter of law, that such facts could not lawfully support a finding of public need for additional motor carrier service in 1973 or 1974.*** " 364 F. Supp. at 1269 (App. 815).

In effect, nine years of what the Commission called "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier applications", 114 M.C.C. 573 (App. 103), is to be set at naught as merely being of "historical value". 364 F. Supp. at 1270 (App. 817).

This Court can find, on the basis of the Commission's decision, that substantial evidence supports the agency findings of fact upon which the ultimate findings and conclusions of the Commission are based. Indeed, neither the District Court nor Appellees have ever challenged those findings under the substantial evidence rule. Further, the agency record is not "stale". With this factual basis, this Court should remand the case to the District Court with directions to affirm the agency decision.

A. The Commission's findings of fact were supported by the substantial evidence recited in the Commission's decision itself.

The Commission's report clearly sets forth the facts upon which it based its conclusion that the applications of Bowman, Johnson and Red Ball should be granted. In limiting the grant of authority to three carriers, the Commission cited its earlier decision in *Motor Freight Corp. Extension Pottawattamia County, Iowa*, 106 M.C.C. 654, 657 (1968), where the agency stated that "[m]ultiple-application proceedings require care not only to avoid the proliferation of operating authorities not needed by the shipping public, but also . . . [to

select those] carriers with the ability to perform the proposed service." 114 M.C.C. 601 (App. 131). After noting that "the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants" (*id.*), the Commission concluded, 114 M.C.C. 599 (App. 129):

> "***In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."

The Commission found that three of the ten applications should be approved and that Bowman, Red Ball, and Johnson were best suited to meet the demonstrated public needs for an improved transportation service. 114 M.C.C. 601-602 (App. 131-132). The Commission's recognition and application of the substantial evidence detailing the increasing transportation importance and need of the Southeastern and Southwestern areas was in accord with its prior holdings. *Herrin Transportation Company, Extension—Jacksonville*, 69 M.C.C. 629, 637-638 (1957); *Roadway Express, Inc., Extension—Birmingham, Dallas, Houston*, 82 M.C.C. 689, 701 (1960).

The testimony and documentary evidence of the growth and transportation needs of the involved areas furnished substantial evidence on this record for the Commission's findings of public need in this case and

that Bowman, Johnson and Red Ball were best suited to fill that need: Bowman, 114 M.C.C. 584-586 (App. 114-116); Johnson, 114 M.C.C. 586-589 (App. 116-119); Red Ball, 114 M.C.C. 580-582 (App. 110-112). The needs of the public and the inadequacies of the existing service in each of the different territories proposed to be served by each of the three carriers were discussed by the Commission at length. 114 M.C.C. 591-598 (App. 121-128). Finally, the Commission carefully detailed the evidence supporting its findings that each of the three would serve a demonstrated public need: Bowman, 114 M.C.C. 604-609 (App. 150-155); Johnson, 114 M.C.C. 609-610, 611 (App. 155-156, 157); Red Ball, 114 M.C.C. 602, 603-604 (App. 132, 149-150). The Court completely disregarded these facts and failed to examine each of the three grants of operating authority on the basis of the substantiality of the findings and the adequacy of the evidence upon which each was grounded. *Akers Motor Lines, Inc. v. United States*, 352 F. Supp. 606, 612 (W.D. N.C. 1973).

The Commission found that some protestant carriers had published service restrictions and embargoes and that others had refused outright to handle traffic. 114 M.C.C. 596 (App. 126). This finding was supported by the substantial evidence of "about 70 of the shippers located at points in a total of 16 states". (*Id.*). The Commission described examples of these specific documented refusals and properly found that

> "***Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond their gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers." 114 M.C.C. 597 (App. 127).

The Commission found that the transit times of existing carriers were inconsistent and excessive. This finding was supported by the substantial evidence of "[a]pproximately 650 shippers" who complained about such inconsistent and excessive transit times. In corroboration of this testimony, "over 200 [shippers] introduced transit time studies demonstrating the undependable service they currently receive." 114 M.C.C. 596 (App. 126). The Commission found inadequate pickup and delivery service on the basis of the substantial evidence of "about 150 shippers located throughout 18 states." 114 M.C.C. 597 (App. 127). The Commission also stated that interline difficulties were unreasonably delaying the movement of traffic on the basis of the substantial evidence of "[a]pproximately 110 shippers." (*Id.*). Serious deficiencies also were found in existing transportation services by reason of loss and damage to shipments, tracing difficulties, and misrouting. This finding was based upon the substantial evidence of "about 200 shippers". (*Id.*).

The Commission found that a substantial number of shippers and receivers of freight throughout the involved territories were receiving complaints from customers because of inadequate existing service which had resulted in the shippers losing customers, business, and short-term discounts. These findings were based upon material evidence of "[a]pproximately 80 shippers in a total of 14 Southeast, Southwest and Midwest States". 114 M.C.C. 598 (App. 128, fn. 36).

These material findings based upon substantial evidence warranted the Commission's ultimate conclusion that the discharge of its duty to carry out the purposes of the Interstate Commerce Act and the National Transportation Policy required it to provide additional transportation service through the grant of authority to the three Appellant carriers. 114 M.C.C. 612-614 (App. 158-160).

B. An "extensive record dealing with five or six year old facts" neither invalidates the Commission's decision nor prevents affirmance of that decision by this Court.

Hearings in this case commenced in March 1966 and were concluded in August, 1967. The hearing examiners issued their report more than two years later in November, 1969. The case was submitted to Division 1 of the Commission in August, 1970. The latter's decision was issued December 30, 1971. As the result of Appellees' vigorous procedural steps, the Commission's decision became final and appealable on September 6, 1972. The District Court's decision was issued over a year later on September 11, 1973. In that decision the Court held that the "extensive record dealing with five or six year old facts" could not support the grant of a certificate in "1973 or 1974." 364 F. Supp. at 1269 (App. 815). In other words, according to the Court below, the record was "stale."

This Court's precedent invalidates the holding. *United States v. Interstate Commerce Commission (Northern Lines Merger Cases)*, 396 U.S. 491; *United States v. Pierce Auto Freight Lines*, 327 U.S. 515; *Interstate Commerce Commission v. City of Jersey City*, 322 U.S. 503. See *Chicago & N.W.R.R. v. Atchison, T. & S. F. Ry.*, 387 U.S. 326, 356 ("Thirteen years have elapsed since the complaints in this [rate] case were first filed.").

In *Jersey City*, after a seven-year proceeding (1937-1944) involving two hearings, two Commission decisions, and at least three Court decisions, this Court sustained the agency's refusal to reopen the hearing because the record was allegedly "stale".

"***The Price Administrator's contention is that this record is 'stale' and that a fresh record is important. One of the grounds of resistence to administrative orders throughout federal experience with the administrative process has been the claims of private litigants to be entitled to rehearings to bring the record up to date and meanwhile to stall the enforcement of the administrative order. *Administrative consideration of evidence* - particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it - *always creates a gap between the time the record is closed and the time the administrative decision is promulgated.* This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. *If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.****" 322 U.S. at 514 (emphasis added).

In *Pierce Auto*, after at least six years of proceedings (1939-1945), the District Court remanded the cases involved to the Commission "to determine [an applicant's] . . . fitness 'to initiate and maintain one of [the trucking] lines in view of present conditions.'" 327 U.S. at 534. This Court held this action "unwarranted." *Id.*

"We think the [District] court misconceived not only the effects of the Commission's action in these cases but also its own function. It is not true, as the opinion stated, that '. . . the courts must in a litigated case, be the arbiters of the paramount public interest.' This is rather the

> business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law." 327 U.S. at 535-536 (footnotes omitted).

The *Northern Lines Merger Cases* involved a record spanning the years 1961-1968, when review of the proceedings were initiated in the District Court. This Court's decision was issued two years later. The Commission's refusal in 1967 to permit up-dating of the record was held "not an abuse of discretion nor did it deny the appellant due process of law [citing *Jersey City*]." 396 U.S. at 520-521.

The drastic change in economic conditions resulting from the Depression, warranting a finding of a "stale" record, *Atchison, T. & S.F. Ry. v. United States*, 284 U.S. 248, provides no basis whatsoever for the District Court's finding. This is not a case where the "record pertains to a different economic era and furnishes no adequate criterion of present requirements." 284 U.S. at 261. That decision, of course, has been "promptly restricted . . . to its special facts, United States v. Northern P. Ry. Co., 288 U.S. 490, . . . and it stands virtually alone." *Interstate Commerce Commission v. City of Jersey City*, *supra*, 322 U.S. at 515. *Accord, United States v. Pierce Auto Freight Lines*, *supra*, 327

U.S. at 534-535; *Ann Arbor R.R. v. United States*, 368 F. Supp. 101, 110 (E.D. Pa. 1973); see 1 K. Davis, *Administrative Law Treatise* §8.18 at 603 (1958, Supp. 1970).

The District Court's decision ignored the Commission's consideration of changes in motor carrier operations in the areas affected by the grant of the three applications. 114 M.C.C. 574-576, 578, 585, 586, 600, 611, 627, 631, 635, 759, 762, 764, 771, 772, 777, 779, 782, 784, 792 (App. 104-106, 108, 115, 116, 130, 157, 173, 177, 181, 321, 324, 326, 333, 334, 339, 341, 344, 346, 354). As the Commission stated, 114 M.C.C. 576 (App. 106):

> "As indicated in Appendix D [App. 170-181], certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. [Citations omitted]. Accordingly, the actions affecting protestants have been noted in Appendix G [App. 319-356] and those actions affecting carriers not parties to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations." (footnote omitted).

Indeed, three of the Appellees received additional common carrier authority during the pendency of this

proceeding as late as 1970.[27] For these Appellees to claim (App. 737), and the Court to agree verbatim, 364 F. Supp. at 1264 (App. 1319), that the entire record in this proceeding was "stale" during a time period when the Commission authorized an increase in their own operations is to claim inequitably the benefits, but not the vicissitudes, of the passage of time. The District Court's failure to note these facts in the record shows the error of its opinion with respect to alleged staleness.

C. The District Court should be directed to affirm the Commission's order.

As the District Court itself stated, "[t]here must be an end to litigation." 364 F. Supp. at 1264 (App. 1319). Substantial support exists on the record before this Court to sustain the Commission's grant of the three certificates to Bowman, Red Ball, and Johnson. The Commission's action was proper under the circumstances. To remand the case to the District Court for further consideration would prolong an already lengthy proceeding and further postpone needed carrier service in the Southeastern and Southwestern areas of the United States.

As this Court stated in *Consolo v. Federal Maritime Commission*, 383 U.S. 607:

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[27] Braswell (Sub-No. 17), Campbell Sixty-Six (Sub-No. 106), and Mercury Freight (Sub-Nos. 11 and 12), see U.S. proposed findings to the District Court (App. 613). These applications were among the ten not selected for consolidation in the administrative proceeding now before this Court. Each of these Appellees, as applicants, stated under oath that a public need existed for the service each proposed. Section 206(b) of the Interstate Commerce Act, 49 U.S.C. §306(b) (1970). Each duplicated, to some extent, service to the territory which Appellants were authorized to serve.

> "Ordinarily we would be inclined to remand to the Court of Appeals for further consideration in light of the standard of review established by the Administrative Procedure Act. [Citations omitted]. However, in view of the fact that this controversy already dates back more than eight years, that it has been before the Court of Appeals twice and that the relevant standard is not hard to apply in this instance, we think this controversy had better terminate now. See O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 504. . . ." 383 U.S. at 621.

The same rule of practical judicial administration has been applied in ICC cases. *Illinois Central R.R. v. Norfolk & W. Ry.*, 385 U.S. 57.

> "Appellees also insist that a new hearing be held so that evidence of 'present conditions' could be presented to the Commission rather than 'speculation.' It is true that this case has been pending for 10 years but this, rather than being a reason for holding additional hearings, operates to the contrary. We have concluded that the orders of the Commission were proper under the circumstances. We have found substantial support for its actions. Accordingly, it is our view that this matter be concluded.
>
> "The judgment is therefore reversed and the case is remanded to the District Court with directions to sustain the Commission's orders." 385 U.S. at 75.

No useful purpose would be served by a remand by this Court to the District Court. This case is one where the District Court "misapprehended or grossly misapplied" the standards of judicial review. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 491. Thus, this Court has found unwarranted or unnecessary a remand to a lower Court for further decision in *Chicago & N.W. Ry. v. Atchison, T. & S.F.*

Ry., 387 U.S. 326, 356 ("attacks on the legal validity of the Commission's findings . . . so insubstantial that no useful purpose would be served by further proceedings in the District Court"); *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 730 (remand with directions to enforce agency order); *cf. National Labor Relations Board v. Food Store Employees Union, Local 347*, ___ U.S. ___, 94 S. Ct. 2074, 2079 ("crystal clear" error by lower Court "renders a remand an unnecessary formality").

IV.

CONCLUSION

The Commission's decision contains substantial evidence supporting the agency's findings of fact and conclusions of law. Because of the serious misapprehension or gross misapplication of accepted principles of judicial review by the District Court, this case presents the appropriate instance where remand to the lower Court for a further and correct review of the administrative action would serve no useful purpose. The case therefore should be remanded to that Court

with directions to affirm the Commission decision.

Respectfully submitted,

MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203
Counsel for Bowman Transportation, Inc.

SANDER W. SHAPIRO
JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767
Counsel for Red Ball Motor Freight, Inc.

BRYCE REA, JR.
DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006
Counsel for Johnson Motor Lines, Inc.

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
Washington, D.C. 20006

ROBERT L. JONES, JR.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901
Counsel for Lorch-Westway Corporation, et al.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1055

BOWMAN TRANSPORTATION, INC., APPELLANT

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

No. 73-1069

JOHNSON MOTOR LINES, INC., APPELLANT

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

No. 73-1070

RED BALL MOTOR FREIGHT, INC., APPELLANT

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

No. 73-1071

LORCH-WESTWAY CORP., ET AL., APPELLANTS

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

No. 73-1072

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinions of the district court (App., vol. II, 1275, and vol. I, 807) are reported at 364 F. Supp. 1239. The report of the Interstate Commerce Commission (App., vol. I, 101) is published at 114 M.C.C. 571. The final order of the Commission (App., vol. I, 363) is not reported.

JURISDICTION

The judgment of the district court was entered on September 11, 1973 (App., vol. I, 739). Appellants, United States and Interstate Commerce Commission, filed a motion for amendment of judgment on September 17, 1973 (App., vol. I, 795). On October 4, 1973, the district court denied the motion (App., vol. I, 807). Five separate notices of appeal were timely filed (App., vol. I, 801-802, 803-806, 825-826, 827-830, 831-834). On November 13, 1973, Mr. Justice Blackmun extended the time for docketing the appeals to January 8, 1974 (App., vol. I, 845), and they were docketed on January 5 and January 8. On April 29, 1974, this Court noted probable jurisdiction and consolidated the five appeals. The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b).

QUESTIONS PRESENTED

1. Whether the district court's reversal of the Interstate Commerce Commission's decision finding that certain additional motor carrier service is required by the public convenience and necessity was based upon improper standards of judicial review.

2. Whether the district court's refusal to remand the case to the Commission improperly precluded the Commission from further consideration of the substantive merits of the issues of public convenience and necessity.

STATUTES INVOLVED

The pertinent statutory provisions, the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding 1, Section 207 of the Interstate Commerce Act, 49 Stat. 551, as amended, 49 U.S.C. 307, and Section 706 of the Administrative Procedure Act, 80 Stat. 393, 5 U.S.C. 706, are set forth in the Joint Appendix at vol. I, pp. 93-100.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court invalidating an order of the Interstate Commerce Commission. The order in question authorized issuance of certificates of public convenience and necessity to three applicants conferring authority to transport general commodities by motor vehicle over regular routes between specified points in the southeastern and southwestern United States. The Commission found that existing

service between the points involved was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public, and that the public convenience and necessity required the grant of these certificates. The district court, although finding the Commission's decision to be supported by portions of the record, concluded that the Commission's findings and conclusions were arbitrary, capricious and without a rational basis. The court further found that the record was too stale to permit a determination of the issues, and refused to remand the case to the Commission for further proceedings.

PROCEEDINGS BEFORE THE COMMISSION

Between December 1964 and July 1965, the Commission received twenty applications from motor common carriers seeking authority to conduct general commodity operations between points in the southwest and southeast. After a prehearing conference in 1966, the Commission ordered that ten of the applications be heard on a consolidated record.

During the one hundred and forty-nine days of hearings [1] more than nine hundred shippers and receivers of freight testified on behalf of the applicants (App., vol. II, 867). Sixty-six competing rail and motor carriers opposed these applications.[2] These protestants were supported by 62 witnesses (*id.* at 868).

---

[1] The hearings, which were scheduled at intermittent intervals, extended from March 1966 to August 1967.

[2] Each of the applicants was also a protestant to the other applications.

The two examiners who heard the evidence recommended that all ten applications be denied. In arriving at this recommendation the examiners established some forty-five separate categories of commodities and examined the evidence with respect to each commodity category. The recommendation was also based on the assumption that granting all ten applications would adversely affect existing carrier service. The examiners acknowledged that many complaints had been voiced by shippers concerning inconsistent and lengthy transit times, inadequate pick-up service, difficulties in tracing, and loss and damage claims (App., vol. II, 873), but found that the proposed services would not be "sufficiently superior to that of the existing carrier services to support a conclusion that the public convenience and necessity require the operation proposed" (*id.* at 874).

Upon the filing of exceptions to the examiners' report and responses, the matter was considered by the Commission, Division 1 (App., vol. I, 101-361). The Commission performed a thorough re-evaluation of the evidence, the recommendations of the hearing examiners, and the pleadings. It adopted the examiners' "summary of the evidence presented by the protestants as to their authorities, equipment, and operations" (*id.* at 105). It did not, however, adopt the examiners' grouping of the evidence on a commodity by commodity basis. The Commission determined that the evidence should be analyzed on a geographic basis in order to obtain "a clearer picture of the supporting witnesses' needs" (*id.* at 121). It

found that "[t]he evidence considered in its entirety is convincing that the additional services * * * will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public" (*id.* at 129).

In reaching this conclusion, the Commission recognized that the traffic studies presented by the supporting shippers were subject to certain infirmities and that "some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic" (*id.* at 130). However, because of the collective weight of the documentary evidence, and particularly the evidence relating to problems with excessive and inconsistent transit times (*id.* at 129-130), "restrictions or embargoes which limit the service available * * *; outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints" (*id.* at 130), it was concluded that "[c]onsidered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service" and that they "have shown a valid public need for additional motor carrier service" (*ibid.*).

The Commission also considered the transit time studies submitted by fourteen of the protesting car-

riers, and stated that those studies demonstrated "that in certain instances during the study periods expeditious service was rendered by certain of the protestants" (*id.* at 145). However, the Commission concluded that the protestants' studies were entitled to less weight than the supporting shippers' studies because they failed to reflect a truly representative picture of existing conditions in the area prior "to the notice of the commencement of the hearings in these proceedings" (*ibid.*).[3]

But the Commission also determined that, even though additional service was needed, a grant of all ten applications "could lead to unhealthy, if not cut-throat, competition inimical to the public interest" (*id.* at 147). Evaluating the quantum of existing service available, the "substantial evidence of widespread public dissatisfaction with available transportation services" (*ibid.*) and the indication of a rapidly increasing demand in this area for "added motor carrier service of a direct, single-line nature" (*id.* at 148), the Commission concluded that the authorization of three new, and somewhat competitive and overlapping services, was warranted. It selected Red Ball, Bowman and Johnson as best suited to meet the demonstrated needs of the public (*ibid.*).

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[3] In reaching this conclusion, the Commission noted two deficiencies in the protestants' traffic studies: "(1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers" (*Ibid.*).

Petitions seeking reconsideration and reopening were denied by the Commission, Division 1, Acting as an Appellate Division, on September 1, 1972 (App., vol. I, 363-369). Petitions seeking a declaration by the Commission that the proceeding involved an issue of general transportation importance were denied by order of the entire Commission dated October 6, 1972 (App., vol. II, 1271).

THE DECISIONS OF THE DISTRICT COURT

On October 4, 1972, the appellees instituted an action in the district court to set aside and enjoin the report and order of the Commission. On September 11, 1973, the three-judge court issued an opinion and judgment (App., vol. II, 1275-1325) setting aside the Commission's order and permanently enjoining the Commission from issuing the certificates (*id.* at 1320).

The district court noted that an order of the Commission will ordinarily be sustained if it "is based on appropriate findings which in turn are supported by substantial evidence" (*id.* at 1304). However, it declared that Section 706(2)(A) of the Administrative Procedure Act sets forth requirements "in addition to" the requirement that certain agency actions be supported by substantial evidence and accordingly "a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion" (*id.* at 1307). The

court purported to base its conclusion that an agency decision which is supported by substantial evidence may nonetheless be set aside as "arbitrary and capricious" on this Court's decision in *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402.

The district court then declared that the Commission had acted in an "arbitrary and capricious" manner in evaluating the evidence. This conclusion was based primarily upon the Commission's statements with respect to the probative value of certain transit time studies which the protestants had introduced to demonstrate the adequacy of existing service. (See Conclusions 12-15, App., vol. II, 1310-1312.) The court declared that there is "no rational basis" for the Commission's refusal to give greater weight to those studies and that the Commission had acted unfairly in failing to give the protestants advance notice that it considered their sampling techniques to be deficient. The court also criticized the Commission for failing "to meet the requisites of clarity" in that "principal findings of the Examiners * * * were neither adopted nor rejected * * *" (*id.* at 1310); for alleged internal inconsistencies (*id.* at 1316); and for alleged deficiencies in "discussion of the total services available at the time of the hearing and at the time of the decision" (*id.* at 1315).

The court refused to remand the proceeding to the Commission. It concluded that remand would serve "no useful purpose" in that the applications had "been pending since 1965, and the facts developed in this record have little bearing on a determination

at this time of 'the present or future public convenience and necessity' ". (*id.* at 1319).

On September 17, 1973, the United States and the Interstate Commerce Commission filed a motion for amendment of judgment to provide for a remand of the proceedings to the Commission for further action consistent with the court's opinion. In an opinion filed October 4, 1973, (App., vol. I, 809) the court denied that motion. It declared that the applicants should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts (App., vol. I, 816).

SUMMARY OF ARGUMENT

Since the enactment of the Interstate Commerce Act, it has been recognized that the "Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted." *United States* v. *Detroit Navigation Co.*, 326 U.S. 236, 241. Its function "is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies." *Ibid.* The reviewing court's function is limited to determining whether the Commission's decision is free of legal error and supported by substantial evidence in the record as a whole. "The judicial function is exhausted when

there is found to be a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Co.* v. *United States*, 292 U.S. 282, 286-287.

By treating the test of 5 U.S.C. 706(2)(A) that the action of the agency not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" as an additional item to be engrafted onto the "substantial evidence" test governing judicial review of agency findings made on the record after hearing, the district court misinterpreted its scope of review. If the agency's findings are supported by substantial evidence, and are within the agency's statutory powers, they are not "arbitrary or capricious" or "without a rational basis" as those terms are used in the Administrative Procedure Act. It is only when a finding is without substantial basis in the evidence that it lacks rational foundation. Cf. *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229. In short, the standard of review applied by the district court is a contradiction in terms.

The district court, under the guise of the "arbitary or capricious" standard, erroneously undertook the Commission's function to weigh the evidence and fashion appropriate relief and to substitute its judgment for that of the Commission. In so doing, the court either ignored or misinterpreted the Commission's treatment of the evidence.

The Commission's findings are supported by abundant evidence. The Commission not only received voluminous evidence demonstrating a need for ad-

ditional motor carrier service between the southwest and the southeast, it also received substantial evidence with respect to the need for service with respect to each route which it authorized in this proceeding. In light of this evidence, and since there is no other reason for setting the Commission decision aside, the judgment of the district court should be reversed with directions to dismiss the complaint. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621.

However, further Commission proceedings should not have been precluded even if it was proper for the district court to set aside the Commission's decision. Reviewing courts are not authorized to make the ultimate determination that a certificate should or should not be granted. If a reviewing court finds that the Commission erred in making such a determination, the appropriate disposition is to remand to the Commission for further proceedings consistent with the court's opinion. The district court's refusal to remand in this case was improper.

The court's assertions that the record is too stale and too bulky to be useful are incorrect and do not justify its action. If the record required additional evidence to bring it up to date, the Commission should have been given an opportunity to reopen the existing proceeding for the receipt of additional evidence. Forcing the Commission to begin afresh with an entirely new proceeding is an unwarranted interference with the Commission's discretion in managing its own proceedings.

I. THE DECISION BELOW IS BASED ON AN IMPROPER STANDARD FOR JUDICIAL REVIEW OF AGENCY FACT-FINDING

This case does not involve any question with respect to the Commission's statutory authority to issue certificates of convenience and necessity to motor carriers, the legal criteria which govern the issuance of such certificates, or the propriety of the procedures which the Commission followed in reaching its decision. The appellees' challenge to the Commission's action was based solely on a claim that the Commission had erred in finding that shippers need the additional services which Red Ball, Bowman and Johnson have been authorized to provide. A determination that existing service is inadequate is essentially factual and judicial review of such a determination is governed by the applicable statutory standard for judicial review of agency findings of fact made in adjudicatory proceedings.

The fundamental error in the district court's decision lies in its misunderstanding and concomitant misapplication of the "arbitrary or capricious" standard of Section 706(2)(A) of the Administrative Procedure Act. It concluded that Section 706(2)(A) permits a reviewing court to set aside an agency decision if the court disagrees with the agency's evaluation of the weight of the evidence. It set aside the Commission decision because it believed the evidence presented by appellees was entitled to greater weight than the Commission accorded to it.

The decision below thus violates the long-established principle that a court's function in reviewing

fact-findings in an adjudicatory agency proceeding is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings. *Universal Camera Corp.* v. *Labor Board*, 340 U.S. 474. The reviewing court is not entitled to substitute its judgment with respect to the weight of the evidence in the absence of a provision permitting *de novo* review of a particular administrative action.

The meaning and purpose of the substantial evidence rule is explained in *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, where this Court observed (*id.* at 619-620):

> We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229. "[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *Labor Board* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300. This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Labor Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106; *Keele Hair & Scalp Specialists, Inc.* v. *FTC*, 275 F.2d 18, 21.
>
> Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weigh-

> ing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute.

Although the court below referred to the limitations on judicial review described in *Consolo*, it substantially departed from them. It did not limit its analysis of the evidence to a determination of its sufficiency to support the Commission's findings. Indeed, it held that "a mere review of the sufficiency of the evidence will not suffice" where there is an "allegation" that agency action is arbitrary or capricious (App., vol. II, 1307). And it invalidated the Commission's order without finding that it was not supported by substantial evidence and without finding that the Commission had failed to make appropriate findings. On the contrary, the court acknowledged that the "[d]efendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division" (App., vol. II, 1309) and that the Commission's ultimate conclusions are supported by portions of the record (*ibid.*)

The district court's Conclusions 12-21 (*id.* at 1310-1316) reveal that the court invalidated the Commission order, notwithstanding the abundance of evidence supporting the Commission's findings, because the court disagreed with the Commission's evaluation of some of the contrary evidence. In particular, the court felt that certain transit time studies which appellees introduced to demonstrate the adequacy of existing service were entitled to considerable weight

while the Commission determined that shipper evidence of inadequate service was entitled to greater weight.

The district court attempted to justify its action by asserting that the substantial evidence rule is not the sole test of the validity of agency actions under Section 706. It noted that Section 706(2)(A) provides that a reviewing court shall "(2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * *." Then the court labelled the Commission's determinations with respect to the probative value of the appellees' adequacy of service evidence as "arbitrary and capricious" and concluded that this rendered the Commission's adequacy of service finding invalid (App., vol. II, 1311).

The end result of the district court's interpretation of the "arbitrary or capricious" concept is to permit a reviewing court to engage in the type of "weight of the evidence" determination which is forbidden by the substantial evidence standard. Such an interpretation of Section 706(2)(A) would defeat the "very deliberate" purposes of Section 706(2)(E) which are described in this Court's *Consolo* opinion.

In enacting Section 706 of the Administrative Procedure Act, Congress obviously did not intend to require reviewing courts to reweigh the evidence in subsection 2(A) and prohibit them from doing so in subsection 2(E). Section 706 should be interpreted in a manner which harmonizes its parts. This

is readily accomplished by holding that any finding which is supported by substantial evidence in the record as a whole is not "arbitrary" or "capricious" within the meaning of Section 706(2)(A)—an interpretation entirely in accord with logic, precedent, and the legislative history of Section 706.

This Court's opinion in *Citizens to Preserve Overton Park* v. *Volpe, supra,* does not support the proposition that a finding which is supported by substantial evidence may be set aside as arbitrary or capricious. Although the Court noted that agency action may be set aside in all cases if arbitrary or capricious and may be set aside in some cases if it was not supported by substantial evidence (401 U.S. at 413-414), the Court did not examine the relationship between these two standards. The *Overton Park* case involved agency action which was "not designed to produce a record that is to be the basis of agency action—the basic requirement for substantial-evidence review * * *" (*id.* at 415); thus the holding of *Overton Park* is simply not applicable to adjudicatory proceedings.

In any event, the description of the scope of review under an "arbitrary or capricious" standard contained in *Overton Park* is inconsistent with the district court's assumption in the present case that the "arbitrary or capricious" standard provides a more expansive scope of review. This Court said that although under the "arbitrary and capricious" standard, the "inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow

one" and cautioned that a court "is not empowered to substitute its judgment for that of the agency" (*id.* at 416).

The federal courts have long recognized that an "arbitrary or capricious" action within the meaning of the Administrative Procedure Act is action taken without a rational basis. In *National Labor Relations Board* v. *James H. Matthews & Co.*, 342 F.2d 129, 131 (C.A. 3), certiorari denied, 382 U.S. 832, the court of appeals observed:

> Administrative action may be regarded as arbitrary and capricious only where it is not supportable on any rational basis. This court, and others, have heretofore held that "something more than error is necessary to spell out arbitrary or capricious action." *N.L.R.B.* v. *J.W. Rex Company, supra*, 243 F.2d 358, and the cases therein cited; *N.L.R.B.* v. *Parkhurst Manufacturing Company, supra*, 317 F.2d 518. The fact that on the same evidence a reviewing court could have reached a decision contrary to that reached by the agency will not support a determination that the administrative action was arbitrary and capricious.[4]

If a finding is supported by substantial evidence, then the agency necessarily had a rational basis for

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[4] Accord: *Eastern Central Motor Carriers Ass'n* v. *United States*, 239 F. Supp. 591, 594-595 (D. D.C.); *Dell Publishing Co.* v. *Summerfield*, 198 F. Supp. 843, 844 (D. D.C.), *affirmed*, 303 F.2d 766 (C.A.D.C.); *East Tex. Motor Freight Lines* v. *United States*, 96 F. Supp. 424, 427-428 (N.D. Tex.).

adopting that finding. Therefore, the "arbitrary or capricious" standard is not properly viewed as an "additional" test of the validity of agency findings in adjudicatory proceedings; rather, as applied to fact-finding, it is synonymous with the "substantial evidence" test.

The legislative history indicates that Congress viewed the "substantial evidence" test as the means of applying the "arbitrary or capricious" standard to agency findings of fact. The final "Report of the Committee on Administrative Procedure" [5] served as the focal point for the enactment of the Administrative Procedure Act. In reviewing existing law, that Report observed that "judicial review may be expected to check extremes of arbitrariness or incompetence in administrative adjudications. This the courts have generally done, as is discussed below, by requiring the adjudications to be supported by substantial evidence" (*id.* at 78-79). And, the Report continued, "* * * the question whether the administrative finding of facts rests on substantial evidence, it is said, is really a question of law, for a finding not so supported is arbitrary, capricious and obviously unwarranted" (*id.* at 88).

Three members of the Committee urged Congress to adopt a uniform provision with respect to the

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[5] Report of the Committee on Administrative Procedure, Appointed by the Attorney General, at the Request of the President, to Investigate the Need for Procedural Reform in Various Administrative Tribunals and to Suggest Improvements Therein, ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. Doc. No. 8, 77th Cong., 1st Sess. (1941).

scope of review in adjudicatory proceedings. They proposed that reviewing courts consider and decide "all relevant questions of: (1) constitutional right, power, privilege, or immunity; (2) the statutory authority or jurisdiction of the agency; (3) the lawfulness and adequacy of procedure; (4) findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence; and (5) administrative action otherwise arbitrary or capricious." [6] The use of the words "action otherwise arbitrary or capricious" indicates that they considered the adoption of unsupported findings to be one form of arbitrary or capricious action.

When the Administrative Procedure Act was enacted, Congress provided a similar enumeration of the subjects of review in Section 10(e), 60 Stat. 243.[7] Section 10(e) was not limited to review of adjudicatory proceedings. It purported to describe the scope of review with respect to all types of reviewable agency action. The Senate Judiciary Committee explained that it "is not possible to specify all instances in which judicial review may operate. Subsection (e), therefore, seeks merely to restate the several categories of questions of law subject to judicial review." Senate Judiciary Committee print of June 1945 on S. 7, p. 39, reproduced in "ADMINISTRATIVE PROCEDURE ACT, LEGISLATIVE HISTORY," S. Doc. No. 248, 79th Cong., 2d Sess. 11 (1946).

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[6] S. Doc. No. 8, 77th Cong., 1st Sess. 246.

[7] Section 10(e) was substantially identical to the present Section 706.

The structure of Section 10(e) (now Section 706) indicates that Congress intended the "substantial evidence" test to be specifically applicable to adjudicatory findings and the "arbitrary or capricious" standard to be generally applicable to other matters requiring review.[8] Each of the categories of review contained in the Administrative Procedure Act embodies a specific application of the generic standard contained in Section 706(2)(A) ("arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). The "arbitrary or capricious" standard, therefore, is not an additional test—more stringent than the "substantial evidence" test—to be applied to adjudicatory findings. Since the decision below is based on the erroneous premise that this is the case, the district court's judgment should be reversed.

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[8] This does not mean that the general "arbitrary or capricious" standard is not applicable to the non-fact finding aspects of adjudicative proceedings. For example, if the ultimate conclusion were totally unrelated to the findings, then the decision of the agency would be "arbitrary and capricious" even though each finding might be supported by substantial evidence. Agencies also make procedural decisions during the course of an adjudicative proceeding which might be challenged as an "abuse of discretion." It has long been recognized that the standard of review governing an agency's administration of its own procedural rules, *American Farm Lines* v. *Black Ball*, 397 U.S. 532, 538-539, or its decision to reopen a proceeding or grant a rehearing, *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514-519, is whether the agency's action was arbitrary or capricious or otherwise an abuse of discretion, even though the decision was made within the context of an adjudicatory proceeding.

II. THE DISTRICT COURT SHOULD BE DIRECTED TO DISMISS THE COMPLAINT AND SUSTAIN THE COMMISSION'S DECISION

Although this Court frequently remands cases for reconsideration under proper standards if it finds that a lower court has applied an improper standard of review, this is not an inflexible rule. The Court has often determined that an agency decision should be sustained without further appellate proceedings. *E.g., Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621; see also *Illinois C.R. Co.* v. *Norfolk & W.R. Co.*, 385 U.S. 57, 75. The latter procedure is appropriate in this case. The district court did not and could not conclude that the Commission's findings are not supported by substantial evidence and no other valid reason for setting aside the Commission's order has been presented.

A further delay in the resolution of this 9-year-old controversy would not only be unnecessary and wasteful, it would also have serious adverse consequences for the public interest. The Commission granted these certificates in order to satisfy the burgeoning transportation needs of the mutually dependent economies of the southeast and the southwest. These needs will remain unsatisfied until judicial review of this Commission decision is finally completed.

A. The Commission Findings Are Supported By Substantial Evidence

No court could reasonably conclude that the Commission findings in this case are not supported by substantial evidence. The Commission decision was

based on "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application[s]" (App., vol. I, 103). The Commission noted (App., vol. I, 126-127) that "[a]pproximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive," [9] and that "[a]bout 70 of the shippers located at points in a total of 16 States complain collective about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic," while "[p]ickup and delivery complaints were voiced by about 150 shippers located throughout 18 States." [10] Furthermore, the Commission relied upon evidence presented by approximately 110 shippers who complained about interline difficulties and about 200 shippers who "collectively com-

[9] For an extensive index to the record made before the Commission of the complaints concerning: (1) excessive and erratic transit times; (2) service restrictions, embargoes, and refusals to handle traffic; (3) pick-up and delivery; (4) interline difficulties and loss, damage and misrouting; and (5) adverse effect upon shippers, see Appendix IV to the Joint Brief of the United States and Interstate Commerce Commission filed in the district court.

[10] In particular, the Commission noted that a number of the protestants "refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers" (App., vol. I, 127).

plain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service" (App., vol. I, 127). Finally, the Commission observed that "[t]he above-described difficulties have resulted in shippers losing customers, business, and short-term discounts" (App., vol. I, 128, n. 36). This evidence clearly supports the determination that existing service is inadequate to meet the needs of the shipping public.

The Commission not only found that the evidence as a whole demonstrates a need for additional service between these two important regions, it also performed a comprehensive evaluation of the evidence presented by Red Ball, Johnson and Bowman with respect to the need for the particular services each proposed to provide (App., vol. I, 132-158).

For example, in considering Bowman's application to serve ten specified points in Mississippi the Commission noted that more than 100 witnesses who ship commodities to or from those points had experienced difficulties with inadequate, inconsistent, and excessive transit times and that transit-time studies submitted showed "that between 3 and 4 day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points" (App., vol. I, 151). The Commission also considered the complaints of 25 witnesses concerning "refusals by authorized carriers to handle their traffic, and of carrier embargoes or restrictions" (*ibid.*), including complaints directed against three of the appellees—Dixie, Campbell, and Roadway. Other ship-

pers complained of "loss, damage, difficulties with interline service, lost business and accounts, and customer complaints" (*ibid.*). Finally, the Commission cited testimony that "witnesses located at such points in Mississippi as Jackson and Greenville have discontinued shipping from Atlanta because of the problems they have experienced" (*ibid.*).

The Commission also found that the carriers protesting the Mississippi portion of Bowman's application do not provide the service which Bowman proposes to provide. The Commission noted that "Dixie serves only 4 of the 10 Mississippi points here sought to be served by Bowman and maintains terminals at only 2 of these points" (*ibid.*), while Gordons (another appellee) does not actively solicit any traffic between Atlanta and Birmingham and seven of ten Mississippi points Bowman seeks to serve (*ibid.*). Other shippers complained of Ryder's failure to render "adequate service to Mississippi, and that it has refused to handle certain traffic to points in this State" (*ibid.*). The Commission further indicated (*ibid.*) that while Roadway, Braswell, and GFA had been authorized to serve points in Mississippi since the hearings in the instant proceedings, those carriers' services were still more limited than the proposed Bowman service.[11]

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[11] For example, Roadway's "coverage of its operating rights in southern Alabama and Georgia is limited and it does not hold authority to render regular-route service at points in Florida" (App., vol. I, 152), while "Braswell's single-line operations to or from Vicksburg, Jackson and Meridian extend only as far east as Atlanta, and its authority in Alabama is

The Commission found comparable evidence with respect to each of the authorized routes. More than 60 witnesses who supported the Kansas-Missouri portion of the Bowman application complained about inconsistent and excessive transit times (App., vol. I, 152). The evidence demonstrated that two of the appellees (Roadway and Transcon) decline to handle some of the shippers' traffic (*ibid.*) while other carriers holding authority to serve a broad territory in the south "collectively serve only" a few major cities (*ibid.*).

Approximately 100 witnesses expressed a need for Bowman's proposed services between points in Arkansas and the southeastern and eastern seaboard territory presently served by Bowman (App., vol. I, 153). Similar testimony was presented concerning the inadequacies of service between New Orleans and specified points in Alabama and Tennessee, and between Dallas-Fort Worth, Texas, and the points Bowman currently serves (App., vol. I, 154).

In approving Johnson's "overhead" single-line service between a number of major points in Texas, Louisiana, and Mississippi and points it serves along the eastern seaboard and in the Gulf territory, the Commission observed that its application was supported by 236 witnesses whose "testimony establishes that the existing service on small shipments traffic between the involved territories is generally inade-

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limited to only the major points of Birmingham and Montgomery" (*ibid.*).

quate" (App., vol. I, 155).[12] The Commission also noted the existence of many complaints concerning lengthy and undependable transit times, poor pick up and delivery service, tracing problems and excessive loss and damage which the Commission recognized

[12] The Commission has informed Congress:

> One of the most serious problems confronting the Commission is the maintaining of adequate service to shippers and receivers of small quantities of freight, particularly where such freight is not profitable to handle or moves to or from outlying locations. With most of the railroads not rendering any or very little less-than-carload service, the burden of supplying this service has fallen principally upon the motor common carriers, either alone or in conjunction with freight forwarders which are traditionally transporters of small shipments. A staff study by the Commission's Bureau of Economics, issued in 1967, shows that while a few motor carriers have responded to the small shipment challenge with new emphasis upon specialized equipment and service features, many carriers have reacted to this burden by instigating service curtailments or complete abandonment. Embargoes, rate increases, packaging and tariff restrictions, and other devices are employed by the motor carriers as an answer to their individual small shipment problems. However, the most serious threat to the maintenance of adequate small shipment service has been the increasing tendency of interline carriers to cancel their through route and joint rate agreements with other motor carriers and their refusal to participate in new agreements. The result has been that the number of informal shipper complaints concerning the deterioration of such service has been increasing sharply in the past year or two.

Hearings before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, on Review of the Interstate Commerce Commission Policies and Practices, 91st Cong., 1st Sess., p. 290.

could "be attributed to the existing joint-line motor service" (*ibid.*).

In considering the applications of four southwestern carriers for authority to extend their routes to southeastern points, the Commission found (App., vol. I, 148) "that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them."[13] The Commission then focused on the problem of which application should be granted. In concluding that Red Ball's proposal was the most feasible, it noted (*ibid.*) that "Red Ball operates over a much more extensive system of routes" than the competing applicants, and that because of its extensive terminals and equipment located at those terminals, Red Ball "is in a much better position to serve shippers and receivers located in the Southwest" than the others. The Commission also noted that Red Ball presented

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[13]In considering Red Ball's application, the Commission specifically considered, as reflected by its discussion in Appendix D to its report (App., vol. I, 179), the grants of other authority and their effect as follows:

"* * * Since the close of the hearing, Braswell, Herrin, Mercury, and T.I.M.E. have been authorized to render single-line service between Atlanta and Dallas, Tex.; Braswell, Herrin, and Mercury have been authorized to serve between Atlanta and Houston, Tex.; Mercury, Braswell, Herrin, Campbell, and Roadway-West have been authorized to serve between Atlanta and Baton Rouge, La.; Braswell, Campbell, and Roadway-West have been authorized to serve between Atlanta and Jackson, Miss.; and Braswell, Campbell, Herrin, and Roadway-West have been authorized to serve between Atlanta and New Orleans, La."

130 supporting witnesses and that an additional 23 witnesses specifically supported its application. These factors, combined, qualified Red Ball "to receive the authority for which a public need has been found in this report" (App., vol. I, 149).

The district court did not question the quantity or quality of the voluminous evidence demonstrating that shippers do need the additional services which have been authorized by these certificates.[14] It focused almost entirely upon the appellees' evidence and asserted that the Commission's failure to give that evidence greater weight is "arbitrary." Such assertions do not imply that the evidence of need is not substantial.

Although the district court referred to the abundant evidence supporting the Commission's decision, it made no attempt to apply the substantial evidence test. Instead, by attributing significance to its finding that the Commission's decision was supported by "portions" but not the entire record, the court erected an impossible barrier to the sustaining of administrative findings. Every adversary proceeding involves contradictory evidence, and findings of fact always require rejection of some evidence. The fact that the court may have disagreed with the Commission's weighing of the evidence does not justify its refusal to sustain the Commission's order.

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[14] It did suggest that the record evidence might not reflect the need for service at the time of the decision (App., vol. II, 1314-1316). That suggestion is unfounded. See pp. 34-35, *infra*.

B. The Commission's Decision Is Not Deficient In Any Other Respect

The district court emphasized several aspects of the Commission's decision which the court found to be "arbitrary". Analysis of these factors in light of the record in this case demonstrates that the court's conclusions represent nothing more than its own reweighing of the evidence and substitution of its judgment for that of the Commission. Moreover, in substituting its judgment for that of the Commission, the court overlooked or misinterpreted the relevant evidence.

1. *The Transit Time Studies*

The district court's conclusion that the Commission acted "arbitrarily" in its treatment of appellees' transit time studies is perhaps the clearest illustration of the court's erroneous approach to review. Contrary to the court's assertion (App., vol. II, 1310-1312), the Commission did not "reject" the studies or refuse to consider them. It merely determined that they should be accorded less weight than other evidence submitted by the shippers. That determination is reasonable and proper. The Commission explained (App., vol. I, 129):

> Generally, the [protestants'] exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered

> in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.

The district court's statements (App., vol. II, 1312) that these "deficiencies" had not been suggested prior to the Commission's ruling, that protestants had not been given an opportunity to defend their evidence or correct such deficiencies, and that the Commission employed a new standard, are incorrect. In its earlier report in *Braswell Freight Lines, Inc., Extension—Atlanta*, 100 M.C.C. 482, 493-494—a proceeding which involved most of the protestants herein—the Commission announced that transit studies such as those submitted in the instant case were not persuasive in that they do not reflect a true picture of the overall pattern of transit-time service existing in the affected areas. Furthermore, protestants were given an opportunity in their petitions for further reconsideration to defend their evidence.

Similarly, the Commission did not apply a different standard in evaluating studies submitted on behalf of the applicants.[15] It recognized (App., vol. I, 126)

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[15] The court (App., vol. II, 1296-1297) erroneously asserts that the Commission overlooked Exhibits 1747-1763, presented

that these studies were also subject to deficiencies, but concluded that "[t]hese infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service" (App., vol. I, 130).

In short, the Commission chose to accord greater weight to the testimony and documentary evidence submitted by the witnesses who supported the application than to appellees' transit time studies. The Commission's decision was not arbitrary; indeed, its evaluation of the relative probative value of the evidence was a proper exercise of its administrative function and, had the district court applied the correct standard of review, the Commission's action would have been sustained.

2. *The Adverse Impact of the Grants of Authority*

The balancing of adverse impact and the public need for additional service is precisely the kind of judgment which is entrusted to the Commission's expertise. The Commission has primary responsibility for implementation of the National Transportation Policy and, in discharging its responsibilities, the

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by one protestant covering periods prior to the notice of commencement of hearings. The Commission in fact considered such exhibits in stating (App., vol. I, 339) that the data reflecting operations during certain test periods submitted by Campbell reflected time performances ranging from 71.6 to 82.1 percent.

Commission must weigh the assertions of injury from new competition against the benefits from such competition.

Contrary to the district court's assertions (App., vol. I, 784-785), the determination that appellees will not be adversely affected by the grant of these certificates is not inconsistent with the facts found by the examiners and the Commission. Although the Commission did find that a loss of any of Roadway's eastbound traffic from Texas origins would result in a further imbalance in its operations (App., vol. I, 345) and that diversion of freight from Campbell's terminal points would result in deterioration of Campbell's service at smaller points in Mississippi (App., vol. I, 339), this does not detract from a determination that appellees did not make a sufficient showing of adverse effect to warrant rejection of all applications for authority. The Commission found that only one carrier, Holloway, had shown that its operations may be seriously affected and concluded that "* * * the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience" (*id.* at 157). The Commission was acting within its discretion in reaching that conclusion. *United States* v. *Dixie Highway Express, Inc.*, 389 U.S. 409, 411-412; *United States* v. *Drum*, 368 U.S. 370, 374.

3. *Clarity of the Commission Decision*

The court's statement that the Commission decision lacks clarity because the principal findings of

the examiners were neither adopted nor rejected is unwarranted. The Commission did adopt "the examiners' summary of the evidence presented by the protestants as to their authorities, equipment and operations" (App., vol. I, 105). It did not, however, agree with the examiners' treatment of the evidence and regrouped the evidence to give a clearer picture of the needs of the relevant communities (App., vol. I, 121). The Commission decision represents a complete analysis of the evidence presented, and the rationale for its conclusions and the evidence relied upon are clearly set forth therein.

4. Changes in Service During the Proceeding

The district court also erroneously evaluated (App., vol. II, 1314-1316) the Commission's consideration of service instituted during the course of the proceeding in determining the competitive effect upon existing carriers. Focusing only on the "quantity of service available" (*id.* at 1314), the court ignored the Commission's repeated references to, and consideration of, changes in motor carrier operations in the area.[16] The Commission's treatment of these changes is manifested by its statement (App., vol. I, 106, footnote omitted):

> As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this

[16] See App., vol. I, 104, 105, 108, 115, 116, 130, 157, 173, 177, 181, 321, 324, 326, 333, 335, 339, 341, 344, 346, 354.

> Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969); and *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations.

Thus, there is no substance to the suggestion that the Commission could not determine the need for service at the time of its decision.[17] The Commission did examine information which led to a change in circumstances and arrived at an informed assessment of the current need for service and the probable future needs of the affected areas.

Since the district court did not find the evidence supporting the Commission findings to be less than substantial and did not find any other significant error in the Commission proceedings, dismissal of the complaints should now be ordered.

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[17] This erroneous assertion by the district court was a critical factor in its conclusion that the record was stale. See pp. 39-40, *infra*.

III. THE DISTRICT COURT ERRED IN PRECLUDING FURTHER COMMISSION CONSIDERATION OF THE SUBSTANTIVE MERITS OF THE PUBLIC CONVENIENCE AND NECESSITY ISSUES

Even if it is assumed *arguendo* that the district court could properly set aside the Commission's decision because it believed evidence presented by appellees was entitled to greater weight, the case should have been remanded for further Commission proceedings. It is well settled that "an administrative determination in which is embedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145. The reviewing court's function "ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration." *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20. See *National Labor Relations Board* v. *Food Store Employees Union, Local 347*, No. 73-370, decided May 20, 1974.

This precept is fitting here. Congress has delegated responsibility to the Commission to determine whether the "[p]ublic convenience and necessity" will be served by granting a certificate to a carrier. This delegation affords "administrative discretion to the Commission * * * to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65. The reviewing court does

not have the power to make the ultimate determination that a certificate should or should not be granted. Its role is limited to determining whether the Commission has considered appropriate factors. Therefore, the district court's refusal to remand this case was improper.[18]

The cases cited by the district court do not support its refusal to remand. It relied on a statement in *American Trucking Associations, Inc.* v. *United States*, 364 U.S. 1, 17, that "under the particular circumstances of this case, we believe that it should be remanded to the Commission" in concluding that a remand is not always required. However, the court missed the thrust of this Court's reasoning in *American Trucking*. The Court there held that the Commission exceeded its statutory authority by granting contract carrier permits to a motor carrier subsidiary of a railroad without imposing "railhaul" restrictions or finding "special circumstances" justifying the waiver of such restrictions. The appellants claimed the Commission had already found that there "were no special circumstances aside from the alleged im-

[18] Of course, if an agency exceeded its jurisdiction in initiating a proceeding or lacks continuing power to deal with the subject matter of the proceeding, then a remand would be inappropriate. *Williams* v. *Washington Metropolitan Area Transit Com'n.*, 415 F.2d 922 (C.A.D.C.), is an example of the latter situation. The court determined that a remand would be futile because the orders under review had been superseded by later fare orders and the Commission did not have authority to fix rates for the past. See, also, *Washington Gas Light Co.* v. *Baker*, 195 F.2d 29 (C.A.D.C.). Those decisions are not applicable, however, to a situation such as that here, in which the agency has the jurisdiction and the ability to correct the defect found by the reviewing court.

possibility of imposing the usual restrictions upon a contract carrier." *Id.* at 16. If this were the case a remand would serve no purpose because the Commission would be unable to grant the permits. This Court said that it was not certain the Commission had made such a finding and that it would be "warranted in precluding further proceedings only if, by an independent search of the record, we were able to conclude that, as a matter of law, there are no factors present which the Commission could have regarded as special circumstances." *Ibid.* The Court accordingly determined that the case "should be remanded to the Commission so that it can apply what we hold to be the applicable principles in such further proceedings as it may find to be consistent with this opinion." *Id.* at 17.

The district court here could not and did not find that as a matter of law there are no factors which could justify the grant of the certificates. The Commission's alleged "error" in evaluating the evidence can be cured by reweighing the evidence along with additional evidence received upon reopening. This Court's reasoning in *American Trucking* shows that this would be the proper procedure.[19]

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[19] The district court's reliance on *Interstate Commerce Commission* v. *Atlantic Coast Line R. Co.*, 383 U.S. 576, and *Zuber* v. *Allen*, 396 U.S. 168, is also misplaced. Neither *Atlantic Coast Line* nor *Zuber* involved review of agency findings in adjudicatory proceedings. Moreover, to the extent these decisions comment on the necessity of remand after review of agency action, they support our position. Thus, in *Atlantic Coast Line* this Court said: "When the primary jurisdiction doctrine requires initial decision by the Commission, it also precludes the court from redetermining the

The district court attempted to justify its action by declaring in its opinion denying a motion to amend the judgment (App., vol. I, 809-823) that it was not precluding the Commission from granting certificates, but was only precluding the Commission from utilizing the present record because it is too bulky and too stale to be useful.

Recognizing that lapses of time between the conclusion of hearings and the issuance of a final agency order are inevitably involved in administrative proceedings, this Court has sustained agency determinations based on records no more current than the one involved in this case. See *Northern Lines Merger Cases*, 396 U.S. 491, 520-522; *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503; *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515. As this Court observed in *Jersey City*, *supra*, 322 U.S. at 514:

> Administrative consideration of evidence—particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it—always creates a gap between the time the record is closed and the time the administrative decision is promulgated. * * *

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question itself should the Commission decision be defective. The proper course is to remand to the Commission * * *." 383 U.S. at 601. In *Zuber* this Court declined to remand a controversy concerning milk marketing orders to the Secretary of Agriculture because, among other reasons, the government did not request a remand; here, the Commission did request that the present case be remanded.

Reopening of the record is within the discretion of the agency (see, *e.g.*, *Northern Lines Merger Cases*, *supra*, 396 U.S. at 520), and the Commission did not abuse its discretion in declining to reopen the proceedings in this case. As noted earlier, the Commission took notice of developments which occurred between the closing of the record and the issuance of its order. If, however, the district court's conclusion that new developments require further consideration is accepted, the course set forth in this Court's opinion in *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 172, should have been followed. After noting several unquestioned recent events, including the amendment of a relevant statute between the date of the Commission's order and the court's opinion, this Court there stated:

> * * * These intervening facts so changed the complexion of the case that (even putting aside the consideration discussed above) the reviewing equity court, in the exercise of its sound discretion, should not have affirmed the order, as it did, but should have vacated it and remanded it to the Commission for further consideration in the light of the changed conditions. See *Ford Motor Co.* v. *Labor Board*, 305 U.S. 364, 374; *Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U.S. 126, 130-131; *Gulf, C. & S.F.R. Co.* v. *Dennis*, 224 U.S. 503, 506-509.

The district court's prohibiting of the introduction of all or portions of the present record in a subsequent proceeding here was thus an unwarranted interference with the Commission's discretion in manag-

ing its own proceedings. Moreover, it reflects a misconception of the nature and significance of the evidence which casts further doubt upon the validity of the court's conclusions.

The court's statement that the record is too bulky indicates an assumption by the court that evidence introduced by other carrier applicants is irrelevant. That assumption is incorrect. Multiple application proceedings tend to overlap and to produce evidence establishing deficiencies in a broad area. All the evidence should be considered in such proceedings. The Commission's function is not to oversee a contest between competing motor carriers but to determine whether the "public needs the extra hauling capacity in the areas covered by the certificate." *Carolina Freight Carriers Corp.* v. *United States*, 297 F.Supp. 848, 852 (W.D.N.C.). In so doing, it must be free to review and rely upon all evidence of shipper dissatisfaction regardless of the carrier actually supported. To do otherwise would be to refuse to consider all relevant evidence of need. Although changes have undoubtedly occurred since this record was assembled, this does not make the voluminous evidence with respect to shipper needs and the capabilities of various carriers irrelevant. The Commission should be permitted to update the record in an appropriate manner (if necessary) and should not be required to conduct an entirely new proceeding.

Thus, even if it had been proper to set aside the Commission's decision, the case should have been remanded to the agency for a determination of the ap-

propriate course of action in light of the court's opinion. If additional evidence is required to bring the record up to date, the Commission should have the discretion to reopen the existing proceeding for the receipt of additional evidence. A "judgment which instructs the Commission to grant relief to the appellee and precludes the Commission from reopening the proceedings for the receipt of additional evidence * * * is an improper limitation on the Commission's duty to reconsider the entire case." *United States* v. *Saskatchewan Minerals*, 385 U.S. 94-95.

CONCLUSION

The judgment should be reversed, and the case remanded with directions to sustain the Commission's order under review.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

THOMAS E. KAUPER,
Assistant Attorney General.

WILLIAM L. PATTON,
Assistant to the Solicitor General.

CARL D. LAWSON,
ROGER B. ANDEWELT,
Attorneys.

FRITZ R. KAHN,
General Counsel,

BETTY JO CHRISTIAN,
Associate General Counsel,

RICHARD H. STREETER,
Attorney,
Interstate Commerce Commission.

JULY 1974.

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SUPREME COURT, U. S.
AUG 27 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BRIEF FOR APPELLEES

DON A. SMITH
THOMAS HARPER
P. O. Box 43
Fort Smith, Arkansas 72901
WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105
WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036
DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D. C. 20004
PHINEAS STEVENS
P. O. Box 22567
Jackson, Mississippi 39205
PHILLIP ROBINSON
P. O. Box 2207
Austin, Texas 78767
M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees

R. L. MIDKIFF, INC., 920 Cherry Street, Kansas City, Mo. 64106, 421-3900

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In the Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BRIEF FOR APPELLEES

INTRODUCTION

This brief is submitted jointly on behalf of all appellees.[1] No issue is taken with the portions of appellants' briefs entitled "Opinions Below", "Jurisdiction" and "Statutes Involved".

1. Arkansas-Best Freight System, Inc.; Mercury Motors, Incorporated; Alamo Express, Inc.; Braswell Motor Freight Line, Inc.; Campbell Sixty-Six Express, Inc.; Central Freight Lines, Inc.; ET&WNC Transportation Company; Eagle Motor Lines, Inc.; Gordons Transports, Inc.; Holloway Motor Express, Inc.; Mercury Freight Lines, Inc.; Red Arrow Freight Lines, Inc.; Red Line Transfer & Storage Company, Inc.; T.I.M.E.-DC, Inc.; Transcon Lines; Yellow Freight System, Inc.; Roadway Express, Inc.; and Jack Cole-Dixie Highway Company.

QUESTIONS PRESENTED

The questions presented by the United States and the Interstate Commerce Commission reasonably set forth, as far as they go, the issues before this Court. However, the "Questions Presented" submitted by appellees more precisely define the issues:[2]

> "Upon finding orders of the Interstate Commerce Commission, entered after a formal hearing, to be based upon findings and conclusions that were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, did the District Court, expressly following a provision of the Administrative Procedure Act, 5 U.S.C. § 706, err by holding such orders to be unlawful?
>
> Was it mandatory that the District Court remand this case to the Commission for further proceedings on the present record; or, if not mandatory, did the court properly decline to remand under the peculiar circumstances and development of the agency record?"

STATEMENT

The order in question involves a decision of the Interstate Commerce Commission disposing of applications by the three motor carrier appellants (Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc. and Bowman Transportation, Inc.; "Johnson", "Red Ball" and "Bowman") that were before the Commission for more than seven years. During that period a massive expansion of carrier operations

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2. Appellees' Motion To Dismiss and Affirm, at 2.

took place with Commission approval.[3] Initially, there were 21 applications that sought major expansions of operating authority within southeastern and southwestern portions of the United States. Ten, including the three here involved, were selected for hearing on a consolidated record before two of the Commission's most experienced hearing examiners[4] (App. 1282).

A joint brief has been filed for appellants, United States of America and Interstate Commerc Commission. They will be referred to herein as "the Government". A separate brief has been filed jointly on behalf of appellants, Bowman, Johnson, and Red Ball, applicants before the Commission, and a group of shippers that testified in support of the Johnson application.[5] They will be referred to collectively as "the private appellants".

Appellees are 18 motor carriers that participated in the Commission proceeding as protestants and in the court below as plaintiffs. They will be referred to collectively as "appellees".

The Government's brief outlines the dates involved and the massive size of the record resulting from the con-

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3. *E.g.*, at the time of the hearing, three carriers provided direct service between Atlanta and Dallas, focal points of the proceeding. At the time of the Commission's decision, there were 13 such carriers. Similar expansions occurred without exception at every city involved (App. 1298-1299). The court below was furnished with a detailed analysis from the record demonstrating the specific increases that occurred at 14 of the principal cities involved. Plaintiffs' Initial Brief (District Court), at 142-145.

4. Now termed "administrative law judges". For consistency, the title "examiners", used in the record, will be utilized here.

5. These shippers did not take the same position, as intervenors before the Commission, that they had taken as witnesses at the hearing. For example, all but 12 had testified in support of one or more of the other applications, in addition to Johnson's, but the arguments that they advanced before the Commission (including those deemed improper by the reviewing court) were submitted only in behalf of Johnson (App. 946-979).

solidation of the ten applications. The examiners accurately summarized the voluminous evidence,[6] finding that there was no public need for the services proposed and that approval of *any one* of the applications would result in a serious deterioration of existing service, contrary to the public interest and the National Transportation Policy (App. 889-892). The examiners' conclusions were predicated, in part, upon the fact that *none of the carrier appellants proposed to supply service to any point or operate over any route that was not already adequately served by multiple carriers.* Instead, each proposed only to render a highly selective form of "overhead" operation, restricting their service to selected major cities. The examiners found that the carriers adequately serving the areas were dependent on volume traffic at the larger cities (that would be served by carrier appellants) in order for them to maintain service to the smaller communities (that would not be served by carrier appellants). They recognized that if any of the applicants were permitted to superimpose its proposed service on that presently provided, it would result in a deterioration of service at major cities and smaller communities along the routes, and would result in forcing existing carriers to increase the amount of their empty vehicle operations within the area[7] (App. 1290, 1300).

Most of the unsuccessful applicants filed exceptions, challenging the examiners' conclusions *but not their specific findings of fact* (App. 1292). At this stage of the proceedings, additional counsel entered the picture and new parties

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6. No party has ever challenged the accuracy of the examiners' summary of the evidence as set forth in their 300-page report (App. 1285, 1292).

7. In view of the fuel crisis, the Commission recently reemphasized its long-standing policy of "minimizing or eliminating" empty vehicle movements. 38 Fed. Reg., No. 228, at 32856-7; No. 231, at 33355-6 (1973).

were permitted to intervene, resulting in the injection of political issues and arguments (App. 1302, 1318).

The final administrative determination of the proceedings resulted in the reversal of the examiners' conclusions (but not their findings) as to three carriers (appellants herein) and the sustaining of their denial of the remaining seven applications. This was by a two-to-one vote of a division composed of three of the eleven commissioners.[8] The 11-member Commission declined to review this decision, holding that "no issue of general transportation importance is involved" (App. 1281).

In discussing the decision of the Division, the private appellants make several comments in their "Statement" section which are contrary to the actual recitations in that decision. For example, at page 8 of their brief, they state that "the Commission rejected the examiners' findings and adopted only their 'summary of the evidence presented by the protestants [appellees] as to their authorities, equipment and operations.'" This statement is erroneous. If the Division had, in fact, "rejected the examiners' findings" as suggested by private appellants (for the first time), this would have left the Division's report devoid of findings to support essential conclusions. The Division's conclusion, for example, that applicants are "financially and

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8. A dissenting opinion (App. 1323), favoring the denial of all applications, appears as a part of a subsequent decision by the same division after reopening the proceeding for the purpose of approving the application of one more applicant, Jones Truck Lines, Inc. See *Jones Truck Lines, Inc., Extension—Atlanta, Georgia*, 117 M.C.C. 586, 597 (1972). Appellees, as plaintiffs below, sought to supplement their complaint so as to seek review of *Jones* as a part of the present case; however, the Court overruled these efforts (App. 1278, 1320-1325), and a separate suit challenging *Jones* is now pending before the District Court for the Western District of Missouri, Springfield Division. At the Government's request, *Jones* is being held in abeyance awaiting decision herein.

otherwise fit and able properly to perform the proposed services" is based upon findings that appear *only* in the examiners' report, but are not mentioned in the Division's report. Taking note of this fact in their final pleading before the Commission, the private appellants defended the Division's reliance upon factual findings that appear only in the examiners' report.[9]

As found by the court below, "at no point in its report did the Division reject any of the Examiners' findings of fact" (App. 1292). Moreover, in its brief before the District Court, the Government asserted that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated" (App. 1293).

In another erroneous assessment of the Division's order, the private appellants indicate that the Division felt that the examiners' analysis of evidence on a commodity basis had resulted in an "atomized treatment" (Brief 8). No such definitive or conclusive finding was made by the Division. It stated that a geographic statement of the evidence might point up the facts more clearly. This, however, was unnecessary inasmuch as the examiners, within the commodity breakdown which they used, carefully analyzed the geographic aspect of the testimony. Thus, the examiners' findings and report were predicated not

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9. *E.g.*, "The examiners' recitation of the details of Johnson's financial picture leaves no room for doubt as to its financial ability to do what it proposes. The examiners' findings are in accord with and are fully supported by the evidence. The Commission *properly relied upon those findings* in reaching its ultimate conclusion . . ." Reply of Johnson to Petitions for Reconsideration, dated August 16, 1972, at 43 (emphasis added). The same argument appears in Bowman's Reply to the same petitions, dated August 10, 1972, at 36.

only upon a general commodity basis, but also upon a geographic basis (App. 980-1042).[10]

Another factual mistake in the private appellants' brief is the statement at page 9 that petitions for reconsideration of the Division's decision were pending from December 30, 1971 until September 6, 1972. Actually, the Division's decision was not served until January 24, 1972 (App. 101). Following the service of such order, appellees and others filed petitions for reconsideration, and all but one of the petitions were summarily denied by the Commission only 12 working days after the replies thereto were filed.[11]

Other factual misstatements in private appellants' brief will be discussed in the "Argument" section, *infra*.

The present suit charged that the Division's decision was invalid and prayed that the enforcement of its order be enjoined.[12] In its opinion the District Court summarized the Division's report in detail and carefully set forth the reasons why it found the Division's order to be invalid (364 F. Supp. 1239; App. 1292). The opinion is clear and comprehensive. Briefly stated, the court concluded that there was no rational basis for the determinative findings and conclusions in the Division's report. It found that the Division arbitrarily and capriciously applied a discriminatory double standard by, for example, giving great weight to evidence favorable to private appellants while ignoring or expressly refusing to accord weight to the same or similar evidence favorable to appellees.

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10. A summary of the examiners' handling of the witness testimony pointing up the geographic, as well as the commodity basis of consideration, is found in appellees' initial brief to the court below, beginning at 40.

11. The exception being that of Jones, whose application was reopened and granted. See n. 8, *supra*.

12. The complaint set forth in comprehensive detail the numerous grounds upon which appellees rely. It was not challenged by any pre-hearing motion or other attack.

The court, therefore, set aside the Division's order and enjoined the issuance of the certificates authorized therein, concluding that the Division's findings and conclusions were "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law", pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706. The court affirmatively refrained from expressing any opinion concerning the ultimate issue of public convenience and necessity, recognizing the Commission's exclusive prerogative to make such determination.

Following judgment, the Government moved the court to amend the judgment and remand the proceedings to the Commission. This motion was based upon the allegation that the court had no jurisdiction to do other than as requested by the Government and that remand was, therefore, mandatory[13] (App. 795). The court denied the motion (364 F. Supp. 1239, 1266; App. 808, 809-823).

SUMMARY OF ARGUMENT

The reviewing court made a probing, in-depth review of the entire agency record, and found substantial legal error. It concluded that the agency's actions, findings and conclusions were without rational basis; that the agency violated basic rules of fairness; and that its report "sounds more in advocacy than in impartial adjudication" (App. 1319).

The court properly reviewed the entire record, and correctly refused to limit its consideration to portions of the record or to one side of the case.

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13. This was the only remand question raised in the court below. Therefore, the only remand question properly before this Court is whether remand was mandatory. See *infra*, p. 65.

The standards for judicial review of this proceeding are found in § 706 of the APA. This section must be *considered in its entirety.* The substantial evidence test of § 706(2)(E) is applicable. Also applicable is the arbitrary or capricious test of § 706(2)(A). Neither test is exclusive. Neither test is paramount. Either or both may be applied to the review of agency action based upon an adjudicatory hearing. The latter standard is particularly descriptive of the prejudicial and discriminatory action that permeated the agency's report in this case, because such action was "arbitrary," "capricious," and "without rational basis."

In reaching its conclusions, the reviewing court did *not* find the actions and conclusions of the agency to be supported by substantial evidence, nor did the court find that the agency made erroneous findings of fact. Instead, the court properly concluded, *as a matter of law,* that the agency's improper treatment of the evidence resulted in conclusions that lacked a rational basis. In so holding, the court was not weighing the evidence.

The reviewing court's construction and application of the judicial review provisions of the APA were fully consistent with the legislative history and plain language of § 706. Both compel recognition of the six *separate* standards of review enumerated therein. No new standard of review was applied, nor was there an enlargement of the statutory scope of review. The decision specifically follows the precedents of this Court and comports with the practice of reviewing courts in other jurisdictions . Where agency action is lacking in rational basis it is arbitrary and capricious and must be set aside.

After finding substantial legal error in the agency's report, the court set the order aside and enjoined its enforcement. Following entry of judgment, the Government (but not the private appellants) moved the court to amend

the judgment on the ground that the court lacked jurisdiction to set aside the agency order without directing that the case be remanded for further proceedings. The Government's suggestion, made for the first time after entry of judgment, was based solely on the contention that the court *must*, not *should*, remand the proceeding. No one suggested to the court that remand would serve any useful purpose. The District Court overruled the motion, noting that its judgment did not preclude the agency from proceeding to determine the issue of public convenience and necessity. The court held that, under the unique circumstances of this case, further determination of this issue by the agency could best be made on a new record, explaining that use of the present record would impede rather than facilitate such determination. The court found that the present administrative record is beyond repair: it includes tremendous portions unrelated to the three applications here involved; it includes improper political issues injected after issuance of the examiners' report; and it includes evidence presented in 1966 and 1967 that would not be helpful to the Commission in making a further determination of the present and future public convenience and necessity.

Remand is not mandatory. It is a matter committed to the sound discretion and considered judgment of the reviewing court. Unless it would serve a useful purpose, remand is inappropriate. The court properly concluded that it would serve no useful purpose here.

A comprehensive, in-depth review and fair assessment of the record as a whole was made by the reviewing court. Accordingly, this Court need not make an independent review of the agency record, but, instead, should follow its usual rule of noninterference. The unanimous decision of the three-judge court should be affirmed.

ARGUMENT

I

The Court Properly Found Substantial Error in the Division's Decision

Appellants place emphasis upon the size of the agency record. It is indeed large since it embraces major application proceedings of 10 carriers. Although this case involves only the applications of Bowman, Johnson, and Red Ball,[14] appellants emphasize the large number of witnesses that testified in support of the 10 applications, considered collectively.[15] The presentation of 10 applications on a single record produced many unique developments, due to the overlapping aspects of the applications and the various applicants' opposition to the other applications. Each applicant's presentation, therefore, embraced criticisms of other applicants' service and demonstrated that all of the involved carriers, applicants and protestants alike, operate under similar conditions and perform similar services.

None of the applicants proposed to render any new or different type of service or to provide service at any point not served by multiple carriers. They sought only to supplement existing service by performing a highly selective

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14. A separate suit is pending as a result of the Commission's approval of the Jones application on the basis of the same record. See n. 8, *supra*.

15. The examiners noted: "Almost every shipper . . . is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [*Transamerican Freight Lines, Inc. —Purchase (Portion)—Allen Motor Lines*, 59 M.C.C. 695, 722], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur" (App. 878).

operation, serving only the major cities, while leaving to others the responsibility of handling the less desirable traffic at smaller communities (App. 1283).

In their detailed and comprehensive report, the examiners analyzed *all* of the evidence and summarized their findings of fact in a series of appendices to their report. They concluded that approval of *any one* of the applications would result in a deterioration in existing service, both at major cities and at smaller points along the proposed routes, contrary to the National Transportation Policy[16] (App. 889-892, 903-905).

Exceptions were filed that challenged the ultimate conclusions of the examiners. "No exception was taken, however, to any specific finding of fact" (App. 1292). In their brief, at 42-43, the private appellants argue that their exceptions did not concede the correctness of the examiners' findings of fact, but they still point to no inaccuracy in such findings. To demonstrate the absence of any challenge to the examiners' statement of the facts, the exact exceptions filed by such parties are quoted in Appendix I hereto.

The examiners' decision was based strictly upon the facts of record (including facts specifically made the subject of official notice). When the case came before a Division of the Commission, however, the character of the

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16. 49 U.S.C. preceding § 1. "To the extent that carriers may be failing properly to perform under their certificates and under the terms of section 216(b) of the Interstate Commerce Act, remedies are available other than the granting of authority to more carriers. We do not believe that authorization of additional carrier services in an area served by an adequate number of carriers fosters sound economic conditions in transportation; nor is it the only way to minimize the service failures and improve service to the public. Where complaints of these failures have been made to the carriers or proper authorities, remedial action has been taken" (App. 874).

proceeding was changed by the injection of extraneous issues, largely political in nature.[17] The entire tenor of the Division's report differs sharply from that of the examiners'. Every contention advanced by the parties, and all facts bearing upon such issues were discussed in detail in the examiners' report; and it is obvious that they considered such issues in a wholly impartial manner. The Division's report, however, discussed only those facts favorable to the applicants and completely ignored facts and issues stressed by protestants. Although contrary conclusions were reached by the Division, its report did not take issue in any respect with any finding of fact set forth in the examiners' report.

This proceeding was before the District Court exactly one year.[18] At the time of oral arguments on the merits, appellees introduced the entire record made before the Commission. Previously, each Judge[19] had been furnished with: (a) a comprehensive abstract of the evidence prepared by Johnson and Bowman (7 volumes; 3,200 pages);[20] (b) another comprehensive abstract of the evidence pre-

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17. "After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration" (App. 1302).

18. During its pendency, a temporary restraining order was in effect. It was issued following submission of affidavits, briefs and oral arguments, as described in the court's opinion which contains detailed findings and conclusions. 350 F. Supp. 539 (W.D. Ark. 1972).

19. The panel was composed of Chief Judge Pat Mehaffy, United States Court of Appeals, Eighth Circuit; Senior District Judge John E. Miller; and District Judge Paul X Williams.

20. Acknowledging the size of the record, these appellants urged the District Court, as they had urged the Commission, to utilize such abstract which "capsules this huge record into workable proportion" (Bowman Brief, at 3-4; Johnson Brief, at 9).

pared by Red Ball and appellees (7 volumes; 1,647 pages);[21] (c) an extensive summary of the evidence contained in the 300-page report of the examiners; (d) another summary contained in the Division's 225-page report; and (e) seven comprehensive briefs containing detailed quotations and summaries of the evidence (over 1,200 pages). Each judge therefore had before him summaries, excerpts, charts and briefs totaling approximately 6,600 pages.

During the arguments, the parties urged the court to render a prompt decision (App. 531-532, 541-542, 555-556). The court, acknowledging familiarity with the briefs previously submitted, announced that it would prepare its decision "as quickly as we can" (App. 464, 566, 581).[22] The court's opinion demonstrates its independent research and its careful consideration of every facet of the case.

Appellees challenged the Division's report, primarily on the ground that the Division acted arbitrarily and capriciously and grossly abused its discretion. The reviewing court *found much wrong with the Division's decision.* It did not base its decision expressly upon a conclusion that the Division's action "was not supported by substantial evidence." At the same time, however, the court clearly did *not* find that there *was* substantial evidence to support the Division's action. The court reviewed the entire agency record and concluded that the Division had acted arbitrarily and capriciously and had abused its discretion. Repeatedly, the court found that there was no rational basis for the actions, findings and conclusions

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21. "The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record" (App. 1280).

22. Private appellants insinuate that the court acted hastily (Brief 10); but it had 7 months to study the initial brief, 4 months to study defendants' briefs, 2 months to study the reply brief, and 6 weeks to consider oral arguments before rendering its decision.

of the Division, and in each instance the court described in detail the basis for its conclusions. The court pointed out that in some instances the Division's conclusions were directly contrary to the Division's findings of fact. In other instances it found that the Division ignored facts of record and, in still other instances, it found that the Division applied a prejudicial double standard to its treatment of the evidence. In essence, the court found that the Division did not apply the "basic rudiments of fairness" (App. 1314). Its analysis of the Division's action was summarized as follows:

> "Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication." (App. 1319).

All parties agree that the reviewing court was proper in applying the judicial review standards found in Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706 [hereinafter referred to as § 706].[23] Appellants base their

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23. This section provides that the reviewing court shall:

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(Continued on following page)

appeal on the contention that the reviewing court erred in refusing to apply the "substantial evidence" test of § 706(2)(E) as the *only* standard applicable to its review of this proceeding. Appellees contend that the court properly considered § 706(2) in its entirety and correctly applied the "arbitrary or capricious"[24] test as the standard that best describes the discriminatory and prejudicial action that permeated the Division's report; and, further, that *the court unquestionably reached the right result.*

In deciding this case, however, there is no compelling necessity to catalogue the court's terminology in terms of the separate standards of review prescribed in § 706(2). Appellants cannot deny that: (1) the court engaged in an extensive in-depth review of the entire agency record, and (2) the court found that there was much wrong with the agency's decision.

It would be a gross miscarriage of justice to permit the Commission's order in this case to become effective. The Division's report was not based upon the evidence of record, nor upon a consideration of the National Transportation Policy, nor was it made in furtherance of the public interest. The reviewing court correctly found that the agency's action was unlawful and properly enjoined its enforcement.

Footnote Continued—

> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
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> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error."

24. The provisions of § 706(2)(A) will, for convenience, be referred to as the "arbitrary or capricious" test, but, of course, this also embraces "an abuse of discretion" and "otherwise not in accordance with law."

II

The Reviewing Court Applied Proper Standards of Judicial Review

The reviewing court clearly recognized that "[t]he limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law," and in discussing this principle, the court cited and quoted from the identical authorities relied upon by the appellants (App. 1304).[25]

The reviewing court engaged in an exhaustive, detailed review of the agency proceeding and reached the unanimous conclusion that the Division's action was unlawful for many reasons. The court's opinion described in detail the action, findings, and conclusions of the Division that were not proper, and explained, also in detail, the bases for its decision. As it was required to do, the court reviewed the entire record of the proceeding before the Commission, and tested the lawfulness of the agency's action under the standards prescribed in § 706.

Private appellants argue that the "substantial evidence rule was held inapplicable" (Brief 12). This is not correct. The court recognized the applicability of the several standards of § 706(2), including the substantial evidence test and the arbitrary or capricious test (App. 1304, 1305). More specifically, the court expressly rejected appellants' argument that it should *limit* its review to those portions of the record cited by them (App. 1309). Instead

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25. *E.g., Consolo* v. *Federal Maritime Commission*, 383 U.S. 607 (1966); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951); *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515 (1946); *Willis Shaw Frozen Express, Inc.* v. *United States*, 256 F. Supp. 257 (W.D. Ark. 1966); and *Patterson* v. *United States*, 178 F. Supp. 771 (W.D. Ark. 1959).

of limiting its review "to a determination of the substantiality of such portions of the evidence" referred to by appellants in their briefs, the court recognized its duty under § 706 to review "the record in its entirety . . . including the body of evidence opposed to the Board's view" quoting from *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 488 (1951) (App. 1309). Also quoted was Justice Frankfurter's statement (340 U.S., at 488) that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight" (App. 1307).[26]

Appellants urged the court to adopt the outdated procedure followed by some courts prior to the enactment of the APA. As expressed by Justice Frankfurter "[u]nder this interpretation, the courts need to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored." 340 U.S. at 481. The reviewing court properly rejected this argument (App. 1309).

The court also rejected appellants' contentions that it should limit its consideration to a determination of the *substantiality* of the evidence (App. 1307). The court properly ruled that it could not confine its review to an examination of the substantiality of the evidence in a case such as this where it was charged that the conclusions reached by the agency lacked rational basis (App. 1307). The court recognized that § 706(2)(A) requires the reviewing court to "set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (App. 1307).

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26. Of course, the statute itself requires the court to review "the whole record or those parts of it cited by a party." 5 U.S.C. § 706.

A

The Arbitrary or Capricious and the Substantial Evidence Standards of the Administrative Procedure Act Are Not Synonymous

Appellants take the position that the court cannot properly set aside agency conclusions, based upon an adjudicatory proceeding, on the ground that the agency acted arbitrarily, or capriciously, or abused its discretion, or took action that was otherwise not in accordance with law. They argue that, in a proceeding of this type, the court can do nothing more than examine the substantiality of the evidence. As stated by private appellants, "where such substantial evidence supports the agency decision, the judicial review function of the Court is ended"[27] (Brief 15).

In its Jurisdictional Statement, the Government asserted that "absent questions of the agency's authority which are not involved here, an agency determination in adjudicatory proceedings which is supported by substantial evidence cannot properly be found to be 'arbitrary or capricious'" (J.S. 10). Now, the Government is not as rigid. It asserts at one point that the agency's decision must be upheld if "free of legal error and supported by substantial evidence in the record as a whole"[28] (Government Brief 10). At another point, the Government concedes that "if the ultimate conclusion were totally unrelated to the findings, then the decision of the agency would be 'arbitrary and capricious' even though each

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27. They made similar arguments in the District Court (Bowman Brief 10; Johnson Brief 13; Lorch Brief 6).

28. Clearly, the court here found the agency's action replete with legal error and, as hereafter discussed, the court did *not* find it to be supported by substantial evidence.

finding might be supported by substantial evidence" (*Id.* at 21, n. 8).

Appellants predicate their argument on the proposition that the reviewing court found the Division's order to be supported by substantial evidence. Not so! The court did not make such a finding. It found that the Division's conclusions were based upon subordinate findings "that can be supported only by a consideration of portions rather than the entire record," and that the Division's "ultimate conclusion" was not based upon "adequate subordinate findings" (App. 1309, 1317). The court made it clear that it did not consider the Division's conclusions to be supported by substantial evidence when it found that "the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion" (App. 1319).

Unquestionably the court did not find that substantial evidence supported the Division's critical conclusion that "protestants have not shown that they would be seriously adversely affected by such grants." On the contrary, the court held: "This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report" (App. 1316).

The Government takes the position that, "as applied to fact finding" the arbitrary or capricious test "is synonymous with the 'substantial evidence' test." More specifically, the Government asserts that the arbitrary or capricious test "is not an additional test," but is merely a "generic standard" that finds "specific application" in the remaining standards of § 706(2) (Brief, at 19, 21).

This narrow construction is incompatible with the language of the statute. In fact, its invalidity is illustrated by the Government's recognition that even if the

substantial evidence test is met, an agency decision can still be "arbitrary or capricious" if "the ultimate conclusion were totally unrelated to the findings" (*Id.* at 21, n. 8). Logically, of course, this *must* be recognized; otherwise, the arbitrary or capricious standard would have no effective meaning.

At another point, the Government again demonstrates the fallacy of its argument by conceding that "action taken without a rational basis" must be recognized as "arbitrary or capricious" action (*Id.* at 18). That is *exactly what the reviewing court held in the case at bar* (App. 1317). Time after time, the court found that there was "no rational basis" for the Division's action. In at least seven instances[29] the court made this finding in regard to significant conclusions reached by the Division, and in each instance the court described in detail the action taken by the Division and explained why there was "no rational basis" for such action. The court also made numerous *additional* findings of agency action found to be arbitrary or capricious.[30] Some of these examples are quoted in Appendix II hereto.

As noted, the court stated that "arbitrary or capricious" means "without rational basis." This is the consistent definition given the standard.[31] The suggestion

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29. App. 1310 (para. 12), 1311 (para. 13), 1311 (para. 14), 1312 (para. 15), 1313 (para. 16), 1314 (para. 21), 1316 (para. 21).

30. *E.g.*, App. 1311 (para. 12), App. 1311 (para. 13), App. 1313 (para. 17), App. 1313 (para. 18), App. 1314 (para. 20), App. 1315 (para. 21).

31. *E.g., Carlisle Paper Box Co.* v. *NLRB*, 398 F.2d 1, 6 (CA3 1968); *South Dakota* v. *Volpe*, 353 F. Supp. 335, 339 (S.D. 1973); *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529, 535 (W.D. Mo. 1966); *Eastern Cent. Motor Carriers' Ass'n* v. *United States*, 239 F. Supp. 591, 594-595 (D.C. 1965). See also, *e.g., Hughes Air Corp.* v. *CAB*, 482 F.2d 143, 145-146 (CA9 1973); *Nashua Motor Express, Inc.* v. *United States*, 230 F. Supp. 646, 650 (N.H. 1964).

that the substantial evidence standard should be equated with the arbitrary and capricious standard is an argument advanced for the first time in appellants' briefs before this Court.

The reviewing court clearly understood and properly applied the standards of § 706(2) and correctly characterized the agency's error in terms of such standards. This section requires the reviewing court to hold unlawful and set aside agency *action, findings,* and *conclusions* found to violate *any* of the *six separate standards* stated in subparagraphs (A) through (F). The separate nature of these standards is manifested by use of the disjunctive term "or" that appears before the last of the six standards.[32]

The Government's argument that the arbitrary or capricious standard "is not an additional test" is directly contrary to the views expressed by this Court as well as other courts that have been called upon to consider the scope and meaning of this statute. While citing no decision to support this contention, appellants criticize the District Court for its reliance upon *Citizens To Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402 (1971). They

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32. The disjunctive term "or" is employed in a statute to show that the failure to comply with *any* requirement therein imposes liability. 1A Sutherland, Statutory Construction § 21.14 (C. Sands 4th ed. 1972). Furthermore when, in a statutory enumeration of things, the disjunctive term "or" is placed immediately before the last member of the series (as between § 706(2)(E) and (F)), the term "or" is understood to exist between the previous members. 50 Am. Jur. *Statutes* § 281, at 267.

Congressional intent to separate the standards by use of the term "or" was noted on the floor of Congress during debate over the standards for review in § 5(a) of the Walter-Logan bill, a forerunner of § 10(e) of the APA (§ 706). See text *infra,* pp. 34-38. Congressman Hobbs stated: ". . . [T]hese provisions are in the disjunctive; not in the conjunctive. Each of the grounds under consideration is separated from the next by the word 'or.' So that for *any* of these reasons the court may set aside the decision of the board." 86 Cong. Rec. 4669 (1940) (emphasis added).

take the position that this Court overspoke itself in *Overton* and that the District Court's reliance upon this decision was misplaced. We strongly disagree. *Overton* should not be modified as suggested by appellants since it does nothing more than apply the express provisions of the statute in a way that is fully consistent with the legislative history of the Act.[33]

In *Overton* this Court stated that in determining the "standard for review" it is necessary to "look to § 706 of the Administrative Procedure Act . . . which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet *six separate standards.*" 401 U.S., at 413 (emphasis added). The Government takes the forthright position that this Court was wrong; that the statute does *not* set forth "six separate standards"; that the arbitrary or capricious standard "is not an additional test" but is simply a "generic standard" that must find "specific application" in one of the other standards stated in the section (Brief 11-21).

The error of this attack on *Overton* becomes more apparent when it is borne in mind that the agency decision involved in that case was set aside *solely* because it failed to stand scrutiny under the arbitrary or capricious standard—not because it failed to meet one of the other standards embodied within this so-called "generic standard".

Appellants contend that the arbitrary or capricious standard should be followed only in nonadjudicatory proceedings. They argue that only the substantial evidence standard can be applied to agency action resulting from adjudicatory proceedings. This does not stand the test of logic, and would, indeed, compel a modification of *Over-*

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33. See *infra*, p. 34 *et seq.*

ton since the contention runs contrary to the Court's very deliberate analysis of the statute:

> "*In all cases* agency action must be set aside if the action was 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements. . . . In certain narrow, specifically limited situations, the agency action is to be set aside if the action was not supported by 'substantial evidence.' And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was 'unwarranted by the facts.'" 401 U.S., at 413-414 (emphasis added).

This Court, in *Overton*, referred to the arbitrary or capricious test as "the generally applicable standards of § 706 [that] require the reviewing court to engage in a substantial inquiry." While acknowledging the presumption of regularity attributable to agency action, the Court emphasized that the presumption "is not to shield [agency] action from a thorough, probing, in-depth review." 401 U.S., at 415. Verification that the agency acted within its statutory authority is not enough. Section 706(2) (A) requires a finding that the actual choice made was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. . . . To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. This is the law applicable to the case at bar, and this is *exactly* what the reviewing court followed.

There is no logical basis to support the Government's position that this type of review *must* be made in non-adjudicatory proceedings and that it *cannot* be made in adjudicatory proceedings.

If an agency fails to base its decision "on a consideration of the relevant factors" it cannot "shield [its] action from a thorough, probing, in-depth review" simply because it conducted a hearing. The provision for hearing does not constitute license to disregard "the basic rudiments of fairness."

Hearing or no hearing, an agency cannot be permitted to apply a discriminatory double standard to the parties involved. Regardless of the nature of the proceeding, the "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case" (App. 1311). Clearly, a hearing is not a shield to protect improper agency action. On the contrary:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."[34] (App. 1314).

The reviewing court found much wrong with the Division's treatment and consideration of the evidence.[35] In reaching its conclusions, the court made the type of "thorough, probing, in-depth review" required by *Overton*. It did not act "automata" nor "rubberstamp" the agency's decision. Instead, it exercised the type of "informed professional critique" commended by Justice Frankfurter as

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34. *Baltimore & O.R. Co. v. U. S.*, 264 U.S. 258, 265 (1924).

35. *E.g.*, "the Division's report fails to meet the requisites of clarity." (App. 1310). Appellants do not base their appeal on this finding, since they recognize that it was not determinative of the issues, although the Government does suggest that the Court's criticism was "unwarranted." (Brief 33-34).

the ultimate safeguard against administrative autocracy. *Universal Camera Corp.*, 340 U.S., at 489.

The court was proper in conducting its review pursuant to the standards of § 706(2) (A). Such standards, when applied to an agency's *action*, *findings*, and *conclusions*, do apply to adjudicatory proceedings and do not prescribe standards that are "synonymous with the 'substantial evidence' test."

In applying the 706(2) (A) standard to this action, the court was merely accepting its statutory responsibility, recognized by reviewing courts in jurisdictions throughout the country. It was neither fashioning a new standard of review, nor enlarging upon the proper scope thereof.

For example: *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529, 535 (W.D. Mo. 1966) ("We find that the 'ultimate conclusion' reached by the Commission on the test of actual competition is not based on any 'adequate subordinate findings' and is therefore, in the legal sense, 'arbitrary and capricious'."); *Columbia Shippers and Receivers Ass'n, Inc.* v. *United States*, 301 F. Supp. 310, 319 (Del. 1969) (". . . the Court must apply, *in addition* to the 'substantial evidence' test generally applicable to this action, the standard of review set forth at 5 U.S.C. § 706(2) (A)."); *Eastern Central Motor Carriers Ass'n* v. *United States*, 239 F. Supp. 591, 594 (D.C. 1965) ("Under Section 10 of the Administrative Procedure Act, as applicable here, an order of the Interstate Commerce Commission may be invalidated if it is *either* '(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . (3) in excess of statutory rights . . . (5) unsupported by substantial evidence . . .'."); *Mitchell Bros. Truck Lines* v. *United States*, 225 F. Supp. 755, 758 (Ore. 1963), *aff'd* 378 U.S. 125 (1964) ("[The

order is invalidated] if it is *either* (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; *or* . . . (5) unsupported by substantial evidence . . ."); *Heavy-Specialized Carriers Conference* v. *United States*, 231 F. Supp. 968, 970 (E.D. Mo. 1964) ("The scope of judicial review is narrow and we cannot substitute our own view for that of the ICC, if its view is supported by substantial evidence *and* is not arbitrary or capricious."); *Nashua Motor Express, Inc.* v. *United States*, 230 F. Supp. 646, 650 (N.H. 1964) (" . . . this court is bound to inquire into every aspect of the proceedings below wherein it may appear that the Commission has otherwise applied an erroneous standard of law, *or* has made arbitrary findings, *or* has reached ultimate conclusions without adequate subordinate findings . . ."); *Youngblood Truck Lines, Inc.* v. *United States*, 221 F. Supp. 809, 812 (W.D. N.C. 1963) ("The scope of judicial review of an Interstate Commerce Commission order includes consideration of whether the ultimate conclusions of the Commission are supported by substantial evidence on the record considered as a whole, are free from errors of law, *and are not so arbitrary or capricious as to constitute an abuse of discretion.*"); *Omaha Grain Exchange* v. *United States*, 194 F. Supp. 929, 934 (Neb. 1961) ("[Commission order will be affirmed] unless we find *either* that the orders are capricious *or* arbitrary *or* contrary to statutory authority *or* unsupported by substantial evidence."); *Stott* v. *United States*, 166 F. Supp. 851, 855 (S.D. N.Y. 1958) ("[The APA] provides . . . that the reviewing court shall 'hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' . . . (5) unsupported by substantial evidence . . ."); *Clearfield Cheese Co.* v. *United States*, 308 F. Supp. 1072, 1074 (W.D. Mo. 1969) ("Section 706, Title 5, U.S.C. . . . states that review shall

be on the 'whole record' and that the reviewing court shall 'hold unlawful and set aside agency action, findings and conclusions found to be' arbitrary, capricious, abuse of discretion, or otherwise unlawful *or* contrary to a constitutional right, power, privilege or immunity, *or* in excess of agency jurisdiction, *or* unsupported by substantial evidence, *or* arrived at without observance of lawful procedure *or* 'unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court'."); *Charlton* v. *United States*, 412 F.2d 390, 398 (CA3 1969) (Stahl, J., concurring: "The very listing of the substantial evidence test as a separate and alternative ground for reviewing agency action indicates a legislative intent that it be a *different standard* from that permitting the setting aside of the findings or conclusions of an agency as arbitrary, capricious or an abuse of discretion."). (Emphasis added in all quotations above.) See also, *Associated Indus. of N.Y.S., Inc.* v. *United States Dept. of Labor*, 487 F.2d 342, 349-350 (CA2 1973); *Federal Compress & Warehouse Co.* v. *United States*, 319 F. Supp. 917 (W.D. Tenn. 1970); *Short Line, Inc.* v. *United States*. 290 F. Supp. 939 (R.I. 1968); *Petroleum Carrier Corp.* v. *United States*, 258 F. Supp. 611 (M.D. Fla. 1966).

Private appellants make an ineffective attempt to distinguish the cases cited above that were included in Appellees' Motion to Dismiss and Affirm. They state: "None of them involved the substitution of the arbitrary and capricious rule for the substantial evidence rule in reviewing an agency decision based upon a formal hearing on the record" (Brief 35). No question of substitution is involved. As shown above, however, *all* such cases recognized the applicability of the arbitrary or capricious test to "agency decision based upon a formal hearing on the record" and, in several, the agency action was set aside, *not for lack of substantial evidence*, but because such ac-

tion failed to comply with the standards of § 706(2) (A). That is appellees' point! The reviewing court, in the case at bar, applied the same scope of judicial review consistently followed by reviewing courts throughout the country.

B

Other Applications by This Court of the Arbitrary or Capricious Standard for Adjudicatory Proceedings

In addition to *Overton*, this Court on other occasions in reviewing adjudicatory proceedings has recognized that the arbitrary or capricious standard is separate from the substantial evidence standard. The arbitrary or capricious standard has been applied by this Court together with, or completely apart from the substantial evidence test. This Court has not found it necessary in every instance to indicate expressly that it was utilizing the arbitrary or capricious standard; but, in such instances, the rationale for each decision allows no other conclusion.

The separateness of the two standards was impliedly recognized in *Atchison, T. & S.F.R. Co.* v. *Board of Trade*, 412 U.S. 800 (1973), wherein the ICC, after hearing, approved separate charges for services previously provided under base rates. The three-judge District Court held that the conclusions underlying the agency action *were supported by substantial evidence*, but, notwithstanding, set the order aside because the Commission "had not adequately justified its failure to follow 'its long established rule' " for determining the reasonableness of such charges. *Id.*, at 805.

There was no majority opinion, but five members of the Court agreed that the District Court had acted properly in this respect. Four Justices, after acknowledging

that the scope of review under § 706 is limited and that the agency's conclusions *were supported by substantial evidence*, agreed with the reviewing court's action because "we cannot discover an expressed reason for permitting the railroads to reduce their services without showing that the rates they propose to maintain are reasonable rates for the service they intend to provide." *Id.*, at 817.

In *Atchison*, the exact § 706 standard under which the agency action was found to have been correctly set aside was not stated; but the arbitrary or capricious standard was the *only* test that *could* have been applied since substantial evidence was *conceded* and the remaining tests of § 706(2) were clearly inapplicable. Even if the agency action was not arbitrary, or capricious, or an abuse of discretion (and it may well have been), it was nonetheless "otherwise not in accordance with law."

Consolo v. *Federal Maritime Com'n*, 383 U.S. 607 (1966), cited by appellants, recognizes the separateness of application of the arbitrary or capricious standard and the substantial evidence standards for adjudicatory proceedings. The reviewing court based its decision solely upon its finding that the agency action was contrary to the "substantial weight of the evidence." *Id.*, at 618.[36] In reversing, this Court held that the reviewing court misunderstood the substantial evidence standard.[37] In so

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36. Because the reviewing court found the agency acted contrary to the substantial weight of the evidence, the reviewing court termed this error an abuse of discretion. The case at bar differs. The District Court found violation of the arbitrary or capricious standard because the agency action lacked a rational basis.

37. "In effect, the standard of review applied and articulated by the [reviewing court] in this case was that if 'substantial evidence' or 'the substantial evidence' supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act." 383 U.S., at 618-619.

holding, this Court emphasized the applicability of both the arbitrary or capricious standard *and* the substantial evidence standard when it quoted § 706 as the barometer for judicial review and itself placed "or" between the two standards.[38]

The separate functions of the two standards, as applied to the same agency action, findings and conclusions, were recognized in *Gilbertville Trucking Co.* v. *United States,* 371 U.S. 115 (1962), a case involving Commission disapproval, after hearing, of a proposed merger of motor carriers. The agency action was premised upon the finding and conclusion that the merger had in effect unlawfully taken place prior to the application. The District Court found the agency action both reasonable and supported by substantial evidence. This Court, in agreeing with the conclusion, held that its "review of this [agency] conclusion [was] limited to consideration of whether it [had] a *rational* basis *and* [was] supported by substantial evidence." *Id.,* at 126 (emphasis added). Thus, this Court separately applied both the arbitrary or capricious standard (rational basis) *and* the substantial evidence standard to the same finding and conclusion of the Commission.

This Court also set aside an ICC order, entered in an adjudicatory proceeding, for other than a lack of substantial evidence, in *Schaffer Transp. Co.* v. *United States,* 355 U.S. 83 (1957), a decision relied upon by private appellants. There, the Commission denied a motor carrier's application to provide service between points served exclusively by rail. The discretion invested in the Commission was recognized, but with the following caveat:

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38. This Court noted that §706 "gives a reviewing court authority to 'set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, [or] an abuse of discretion . . . [*or*] (5) unsupported by substantial evidence . . .'" 383 U.S., at 619 (additions in brackets by Court; emphasis added).

> "But that discretion must be exercised in conformity with the declared policies of the Congress. To see whether those policies have been implemented we look to the Commission's own summary of the evidence, and particularly to the findings, formal or otherwise, which the Commission has made. Just as we would overstep our duty by undertaking to evaluate the evidence according to our own notions of the public interest, *we would shirk our duty were we summarily to approve the Commission's evaluation of the record without determining that the agency's evaluation had been made in accordance with the mandate of Congress.*" *Id.*, at 88 (emphasis added).

The agency was found to have erred both in failing to make an evaluation of the "inherent advantages" of the proposed service, and in discounting testimony of witnesses supporting the application. It was held that "since the findings as to the adequacy of rail service do not provide this Court with a basis for determining whether the Commission's decision comports with the National Transportation Policy, that decision must be set aside. . . ." *Id.*, at 92.

The errors committed by the agency in *Schaffer* are in many respects similar to those of the agency in this case. The agency action was not set aside in *Schaffer* because of a lack of substantial evidence. As in *Atchison*, the standard under § 706 for which the agency action was set aside was not expressly stated; but the reasons given for setting aside the action clearly fall within the perimeters of the arbitrary or capricious standard.

As discussed *infra*, see pp. 42-43, § 706 merely restated the standards for judicial review in effect prior to enactment of the APA in 1946. In *McLean Trucking Co.* v.

United States, 321 U.S. 67 (1944), another decision relied upon by private appellants, one of the bases for challenging approval of carrier consolidations was an attack on an agency conclusion that, following consolidation, a certain carrier would not be affiliated with a railroad. This Court upheld the conclusion of the agency, not because it found the conclusion was supported by substantial evidence, but because it could not "find anything arbitrary or unreasonable in the conclusion. . . ." *Id.*, at 91. In *United States* v. *Carolina Freight Carriers Corp.*, 315 U.S. 475 (1942), the certificate of public convenience and necessity was set aside by the Court, not on the ground that the agency findings were not supported by substantial evidence, but because this Court found that the agency applied improper standards in its evaluation of the evidence. That "[t]he judicial function is exhausted when there is found to be a *rational* basis for the conclusions approved by the administrative body" was set forth in *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 287 (1934) (emphasis added). And in *Silberschein* v. *United States*, 266 U.S. 221, 225 (1924), this Court held that agency action could be reviewed if it was "wholly unsupported by the evidence, or [was] wholly dependent upon a question of law, or [was] seen to be clearly arbitrary or capricious." Accord, *United States* v. *Williams*, 278 U.S. 255 (1929).

The foregoing demonstrates that for adjudicatory proceedings, this Court, in accordance with the clear and plain principles now embodied in § 706, has long recognized and applied the arbitrary or capricious standard as a separate standard of review.

C

The Legislative History of the Act Demonstrates Proper Application of Section 706

In applying § 10 of the APA, the District Court fully complied with the express language of the section and the intent of Congress, as reflected by the legislative history of the Act.

The content of the Administrative Procedure Act is the result of extraordinary, meticulous, "paintaking and detailed study and drafting." S. Doc. No. 248, 79th Cong., 2d Sess. 241 (1946) [hereinafter referred to as S. Doc. No. 248][39]; *id.*, at 190, 191, 301, 310, 349, 422.[40] "Intense consideration" of administrative procedure and the judicial review thereof consumed a period of more than ten years, with a plethora of bills being submitted and providing for, *inter alia*, varying forms of judicial review. S. Doc. No. 248, at 187; *id.*, at 63-66, 131-183, 298-302, 351-352.

The highlights of the enactment of the APA were: passage in 1940 of the Walter-Logan bill (H.R. 6324, 76th

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39. The document contains the legislative history of the APA subsequent to the filing of S. 7, 79th Cong., 1st Sess., on January 6, 1945. It contains: the text of the Act as passed; the Senate Judiciary Committee Print of June 1945, 79th Cong., 1st Sess.; Hearings Before The Committee On The Judiciary Of The House of Representatives On The Subject of Administrative Procedure, 79th Cong., 1st Sess., ser. no. 19 (1945); S. Rep. No. 752, 79th Cong., 1st Sess. (1945); H.R. Rep. No. 1980, 79th Cong., 2d Sess. (1946); and the proceedings in the Senate on March 12 and May 27, 1946, and in the House of Representatives on May 24 and 25, 1946. Citations concerning the APA's legislative history subsequent to January 1945, are to this document, in lieu of citation to individual Documents, Reports and the Congressional Record.

40. The extraordinary nature of the study and preparation given the Act is testified to by the following statement from the House Report, S. Doc. 248, at 241:

> "For more than 10 years this legislation has been under consideration. Certainly no measure of like character has had the painstaking and detailed study and drafting."

Cong., 1st Sess. (1939)), and its veto by President Roosevelt (H.R. Doc. No. 986, 76th Cong., 3d Sess. (1940)); the presentation shortly thereafter by a committee appointed by the Attorney General of a comprehensive report ("Administrative Procedure in Government Agencies," S. Doc. No. 8, 77th Cong., 1st Sess. (1941) [hereinafter referred to as S. Doc. No. 8]), containing majority and minority reports and proposed bills, all of which were closely studied by Congress (see S. Doc. No. 248, at 190, 192-193, 245-246); and following delay caused by World War II, the unanimous enactment of the APA in 1946, 60 Stat. 237. See S. Doc. No. 248, at 344, 406, 423; 92 Cong. Rec. 2167, 5668, 5791 (1946).

The Act was passed to satisfy "widespread demand." S. Doc. No. 248, at 187. A need and purpose must necessarily be demonstrated to secure the passage of any bill. This notwithstanding, Congress expressed an extraordinary need and concern for the legislation that culminated in the unanimous approval of the APA. Over a period of many years Congress voiced alarm at the tremendous growth of the Federal bureaucracy, and the concomitant flagrant abuse of agency authority. *E.g.*, 86 Cong. Rec. 4544, 4591, 13669, 13812 (1940); S. Doc. No. 248, at 382, 383. Buffeted by example after example of "absolutism,"[41] of agencies engaging in "autocratic, arbitrary, unreasonable and illegal exercises of authority,"[42] and of agencies abusing the discretion vested in them,[43] intensive Congressional efforts of more than a decade to rectify the intolerable situation were rewarded with adoption of the APA. The fundamental purpose of the Act was to protect against bureaucratic ty-

41. *E.g.*, 86 Cong. Rec. 4539, 4724, 13662, 13669 (1940).

42. *Id.*, at 4591; *e.g.*, *id.*, at 4601, 13670, 13676.

43. *E.g.*, 84 Cong. Rec. 7076 (1939); 86 Cong. Rec. 4544, 13668 (1940).

ranny; to insure due process of law; to provide individuals with a day in court in order to provide them a means to assert their rights; to restore interpretation of law to the courts; to end the aforementioned administrative absolutism, abuses of discretion, and utilization of "autocratic, arbitrary, unreasonable and illegal" means; and to satisfy the crying need for uniformity both in agency proceedings and in judicial review of such proceedings.[44] In sum, the salutary purpose of the Act was to insure "government of law, rather than of men." S. Doc. No. 248, at 381; 86 Cong. Rec. 4539, 4650, 13811, 13813 (1940).

To accomplish this purpose, the APA was drafted to provide "an outline of minimum basic essentials," S. Doc. No. 248, at 193. It was "designed to afford parties affected by administrative powers a means of knowing what their rights are and how they may be protected," *ibid.* See also, *id.*, at 250. Cognizant of both the "widespread demand" and need for a clear statement of the boundaries of judicial review (see, *e.g.*, S. Doc. No. 8, at 210-212; S. Doc. No. 248, at 187), Congress in § 10 of the Act, 5 U.S.C. § 706, set "forth a simplified statement of judicial review designed to afford a remedy for every legal wrong." S. Doc. No. 248, at 193.

Prior to enactment, the question was *not* whether the APA would pass, *but solely* how it should be drafted. See *id.*, at 352. The content was what concerned Congress. In carefully and painstakingly drafting the Act, Congress looked to prior bills and studies (particularly the Walter-

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44. *E.g.*, S. Rep. No. 442, 76th Cong., 1st Sess. 5, 10, 14 (1939); H.R. Rep. No. 1149, 76th Cong., 1st Sess. 4-5, 8 (1939); 84 Cong. Rec. 7076, 7077 (1940); 86 Cong. Rec. 4537, 4538, 4539, 4544, 4591, 4593, 4601, 4646, 4647, 4648, 4650, 4672, 4673, 4724, 4736, 4737, 13662, 13663, 13665, 13667, 13668, 13669, 13670, 13672, 13673, 13675, 13676-13677, 13678, 13808, 13811, 13812, 13813, 13814, 13815 (1940); S. Doc. No. 248, at 193, 304, 312, 313, 318, 326, 327, 351, 373, 380, 382, 383, 384, 385.

Logan bill, and the reports of the Attorney General's Committee), *id.*, at 187-193, 241-250. The final text was the result of extraordinary discussion, analysis and revision.[45]

After the bill passed the Senate, further revision based upon analysis of "many suggested changes and alternative proposals" was made by the House Judiciary Committee. *Id.*, at 250.

The Walter-Logan bill, as passed, contained no provision comparable to the arbitrary or capricious standard of the APA.[46] The only segment even impliedly approaching the

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45. The Senate and House Reports document the careful drafting of the Act. The bill eventually enacted, S. 7, 79th Cong., 1st Sess. (1945), when introduced was a "revised and simplified" version of S. 2030, 78th Cong., 2d Sess. (1944). S. Doc. No. 248, at 190. S. 2030 was "[b]ased upon the studies and hearings in connection with prior bills on the subject" and was the result of "several years of consultation with interested parties in and out of official positions." *Ibid.* Following the introduction of S. 7 (and of the companion House bill, H.R. 1203, 79th Cong., 1st Sess. (1945)), "[a]n entire year . . . [was] spent alone in redrafting." *Id.*, at 246.

Such redrafting was initiated when, upon request by the chairmen of both Judiciary Committees, views and suggestions for improving the bill were submitted by governmental agencies and private parties. With the assistance of the Justice Department and private parties, these submittals were analyzed and the text of the bill revised. A Committee Print was issued by the Senate Judiciary Committee in May, 1945, comparing the original and revised text. *Id.*, at 248; see *id.*, at 11.

Following submission of the revised text to agencies, further comments were received in response. Hearings were held by the House Judiciary Committee on H.R. 1203 and other bills on the subject in June 1945; and in late June 1945 another Committee Print was issued by the Senate Committee following analysis of the latest suggestions and of the hearings then in progress. Following three more months of discussion with public and private organizations and analysis, a further revised S. 7 was reported out of committee in October 1945. *Id.*, at 248-249; see also, *id.*, at 190-191.

46. As reported out of Committee and passed by the House, § 5 of the Walter-Logan bill provided for reversal of an agency "decision" if, *inter alia*, "the findings of fact [were] clearly erroneous; *or* . . . the findings of fact [were] not supported by substantial evidence; *or* . . . the decision [was] not supported by the findings of fact; *or* . . . the decision [was] otherwise contrary to law." 86 Cong. Rec. 4669-4671, 4743 (1940) (emphasis added).

(Continued on following page)

arbitrary or capricious standard appeared in § 5, wherein reversal of an agency decision was required if it was "not supported by the findings of fact."

As compared to the Walter-Logan bill, the APA was drafted to contain "more comprehensive provisions for a judicial review for the redress of any legal wrong." S. Doc. No. 248, at 192, 244. It follows that one of the APA's "more comprehensive provisions" was the arbitrary or capricious standard.

The administrative procedure bill proposed by the majority report of the Attorney General's Committee contained no definitive scope of review. See S. Doc. No. 8, at 92, 191-202, 209. The minority, however, recognized the pressing need of "statutory direction" for judicial review, *id.*, at 209. Its proposed bill contained a provision providing for review of "findings, conclusions, and decisions in any case . . . regardless of the form of the review proceeding," and for consideration of, *inter alia*, "administrative action *otherwise* arbitrary or capricious." *Id.*, at 246-247 (emphasis added).

In comparison to the reports of the Attorney General's Committee, the Act was written to be "more complete than the solution favored by the majority . . . but less prolix and more definite than the minority proposed." S. Doc. No. 248, at 192. Thus, the arbitrary or capricious standard in the APA was not intended to have the indefinite and redundant role assigned the "otherwise arbitrary and capricious" provision in the bill proposed by the minority.

Footnote Continued—

The Senate Judiciary Committee amended § 5 by deleting the "clearly erroneous" and "contrary to law" standards. The deletions were ratified by both the Senate and the House. 86 Cong. Rec. 13676, 13746, 13748, 13807-13808, 13816 (1940).

The arbitrary or capricious provision in the bill as drafted (S. 7, 79th Cong., 1st Sess. (1945)), as reported out of committee (S. Doc. No. 248, at 222), and as passed by the Senate, included reversal for agency abuse of discretion solely by implication.[47] "To make it clear that . . . [the bill] preserve[d] judicial review of abuses of discretion," the "abuse of discretion" ground was written into the bill by the House Judiciary Committee. S. Doc. 248, at 289, n. 22.

Congress foresaw an active, substantive role for the courts. The Senate Report admonished that the provisions of the Act "require[d] vigilant attention to assure their proper operation." *Id.*, at 217. Noting that the Act was generally "one laying down definitions and stating limitations," it was further recognized that "the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is conferred upon the courts in the final analysis." *Ibid.*

In promulgating the six separate standards for review in § 10(e) of the Act, including the arbitrary or capricious standard, as the tools for courts to use in such "vigilant" enforcement, Congress made no exception for the use of those six review provisions. This conclusion is compelled by a mere reading of the plain, clear, and separate standards set forth in § 10(e).

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47. Section 10 of the Act provides for judicial review of agency action except where precluded by statute or where "committed to agency discretion." On the floor of the Senate, Senator Donnell noted that as the bill was then written, some might feel that there could be no judicial review for abuse of discretion. The sponsor of the bill, Senator McCarran, assured the Senate that unauthorized, capricious, or arbitrary employment of discretion was subject to review. S. Doc. 248, at 310-311. As noted in the text *infra*, reversal for "abuse of discretion" was written into the bill by the House Judiciary Committee.

Moreover, the Reports of both the Senate and House Committees speak of "the *several* categories of questions of law" listed in the subsection. S. Doc. No. 248, at 214 and 278 (emphasis added). In addition, the desired application and enforcement of all six separate standards as "plainly" and "clearly" written was made quite clear both in the Reports accompanying the bill and on the floor of Congress.[48]

Looking to the purpose of the Act and to the extraordinary, meticulous, painstaking, and careful preparation given it, it is obvious that Congress intended the arbitrary or capricious standard to serve a definite, separate, viable function in the overall scheme of judicial review. There is not the faintest whisper in the legislative history that the arbitrary or capricious standard was to have either a restricted function or to operate only with respect to certain matters. On the contrary, Congress specifically and expressly sought to cure that forbidden agency action falling within the boundaries of the standard. For example, on the floor of the Senate, Senator McCarran emphasized that "the thought uppermost in presenting this bill is that where an agency

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48. For example, the Senate Report, S. Doc. No. 248, at 193, stated that "[t]he jurisdiction of the courts is clearly stated." And the House Report provided that "[t]he bill is meant to be operative 'across the board' in accordance with its terms, or not at all." *Id.*, at 250.

In discussing the six standards of § 10 of the bill in the Senate, Senator McCarran stated courts were to set aside action "found to be arbitrary *or* contrary to the Constitution *or* contrary to the statutes *or* short of statutory right," etc. *Id.*, at 323-324 (emphasis added). On the floor of the House of Representatives, Congressman Walter showed the standards to be separate, *id.*, at 370, as did Congressman Gwynne, *id.*, at 375.

Senator McCarran stated that the bill had been given "meticulous" study, so that its terms would be construed "in such a way that there may be no divergence of views when we get through." *Id.*, at 310. And Congressman Hobbs "pray[ed] that the plain meaning of . . . [the bill would] be so correctly interpreted as to effectuate its high purpose." *Id.*, at 382. See also, *id.*, at 381 (Hobbs).

without authority or by caprice makes a decision, then it is subject to review." S. Doc. No. 248, at 310. Moreover, Congressman Walter, long a proponent of the bill, stated that "the function of an . . . agency is clearly not to decide arbitrarily or to act contrary to the evidence or upon surmise or suspicion or untenable inference." *Id.*, at 365. Stating that agencies must reach "just" decisions upon the whole record, he noted that agencies "do not have authority in any case to act blindly or arbitrarily." *Ibid.*

Nor was the need for, or purpose of, the arbitrary or capricious standard ever questioned or challenged. As heretofore shown, Congress instead bolstered the standard as originally written by adding the "abuse of discretion" ground for reversal. Had Congress intended the arbitrary or capricious standard to have the narrow, "generic" function ascribed to it by the appellants, Congress would clearly have done so. The extraordinarily careful study and meticulous drafting, and the length of preparation prohibit any other conclusion.

There is no specific explanation of the arbitrary or capricious standard in the reports of the Senate and House Judiciary Committees, save for the aforementioned reason given in the House Report for why the term "abuse of discretion" was added to the arbitrary or capricious standard. But on the floor of Congress, in the only critique of the standard, it was praised by Congressman Springer, a member of the Judiciary Committee, as "a most potent statement and a fair and equitable provision. . . . [I]n those cases where . . . decisions are found to be arbitrary, where the decision is found to be capricious or an abuse of discretion or otherwise not in accordance with the law, the decision can be set aside. That is certainly fair, that is certainly

equitable, and that is certainly based upon a sound philosophy." S. Doc. No. 248, at 377.[49]

Included in the scope of judicial review prior to statutory regulation of such review, and expressly noted by Congress, was the rule that, among other grounds, an agency decision could be set aside if it was either "arbitrary or capricious or unsupported by evidence." S. Doc. No. 145, 76th Cong., 3d Sess. 19 (1940). The employment of the arbitrary or capricious standard in the APA was therefore simply the intentional restatement by Congress of one of the accepted standards of judicial review of agency action, as understood by Congress; and the other standards set forth in 5 U.S.C. § 706 were generally felt by Congress to be those that were employed for judicial review prior to the passage of the Act. S. Doc. No. 248, at 39, 86, 224, 230, 289, at n. 22, 415. But Congress clearly intended one fundamental change in the practice that had been utilized by some courts. Whereas, some courts in reviewing agency action had not looked to the whole record, Congress prescribed that review *must* be based upon the entire record, or those portions cited to the court. *Id.*, at 216-217, 279. This important change was expressly recognized on the floor of Congress. *Id.*, at 248, 280, 321-322, 375, 376.

Congress did not provide that a court upon reviewing the record could reverse only if a decision was "unsupported by substantial evidence," or *only* if a decision was *both* unsupported by substantial evidence *and* was arbitrary or capricious. Congress plainly provided that a decision could be reversed if it was, among other things, ar-

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49. As discussed in n. 47, *supra*, the standard was indirectly discussed by Senator McCarran. Prior to the addition of "abuse of discretion" to the arbitrary or capricious standard, he assured the Senate that discretion employed in an unauthorized, capricious or arbitrary manner was subject to review. S. Doc. No. 248, at 310-311.

bitrary, *or* capricious, *or* an abuse of discretion, *or* otherwise not in accordance with law, *or* unsupported by substantial evidence. Congress clearly intended that a decision be reversed for any one of several reasons. The Senate and the House Reports for the APA, in discussing the scope of review for reversal, *vel non*, of "agency action, findings and conclusions," provided that the terms " 'finding' and 'conclusion' also mean failure to find or conclude as the law and record may require. . . ." S. Doc. No. 248, at 214, 278. They also provided that "[t]he requirement of review upon the 'whole record' means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case." *Id.*, at 248, 280.

Without question, a "failure to find or conclude as the law and the record may require" is arbitrary or capricious action, mandating reversal; as is looking "only to the case presented by one party." These are the types of agency errors found by the reviewing court to constitute arbitrary and capricious action. The court also found abuse of discretion. In reversing the Division, the District Court was conscientiously complying with the express provisions of the APA and the clear intent of Congress.

D

The Reviewing Court Did Not Weigh the Evidence

The Government contends that the reviewing court "set aside the Commission's decision because it believed the evidence presented by appellees was entitled to greater weight than the Commission accorded to it" (Brief 13). It also contends that the District Court "invalidated the Commission's order, notwithstanding the abundance of evidence supporting the Commission's findings, because the court

disagreed with the Commission's evaluation of some of the contrary evidence" (*Id.*, at 15). The private appellants contend (Brief 16) that the District Court reviewed *"de novo"* the decision of the Division,[50] and that the court's decision "requires the Commission to accord equal weight" to all evidence presented (*Id.*, at 42).[51]

Appellants' contentions do not correctly describe either the court's action, or the import of its decision. The court went no further than concluding, as a matter of law, that the Division's treatment of the evidence was not proper. In holding that "there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants" (App. 1311), *the court was not itself weighing such evidence.* If this constitutes "weighing the evidence," as

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50. Private appellants use the term "de novo review." The term is inapposite. It appears in the Bank Merger Act of 1964 where the term "review de novo" was used to reach the same result as "trial de novo." *United States* v. *First City National Bank*, 386 U.S. 361, 368 (1967). In *Overton*, the Court stated that agency action subject to § 706(2)(F) requires the reviewing court "to engage in a de novo review of the action." There, the Court was again using the term to apply to proceedings subject to "trial de novo by the reviewing court." 401 U.S., at 414.

51. The private appellants also make the pro forma argument that "the District Court substituted the clearly erroneous rule for the substantial evidence rule" (Brief 21). The contention has no application to this case. This "clearly erroneous rule" finds its basis in Rule 52(a) of F.R.C.P., which provides that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948). The reviewing court recognized its limited scope of review and acted accordingly. The reasons presented to show that the District Court did not "weigh" the evidence also compellingly demonstrate that the court did not utilize a "clearly erroneous" rule. The court was solely concerned with § 706 questions of law. The court did not set aside findings of fact made by the Division. The court found, as a matter of law, that the conclusions and action of the agency based upon the agency's own findings of fact were improper.

charged by appellants, judicial review would be a futile formality.

In performing its function of review, the District Court was called upon to decide whether the Division acted arbitrarily or capriciously, and therefore without rational basis, in applying different standards in its treatment of the evidence—a far cry from "weighing the evidence" or "de novo" review of the issues presented. The court found, as a matter of law, that the Division had applied a discriminatory double standard in its treatment of protestants' evidence as contrasted to its treatment of applicants' evidence, and specifically enumerated those errors of law. The court summarized the Division's error (App. 1319):

> ". . . In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. . . ."

Stated differently, such action on the part of the Commission "was an exercise of arbitrary power, at variance with 'the rudiments of fair play' long known . . . to our law. The Fourteenth Amendment condemns such methods and defeats them." *West Ohio Gas Co.* v. *Public Utilities Comm'n*, 294 U.S. 63, 71 (1935).[52]

Set forth in Appendix II hereto are findings of the District Court of arbitrary or capricious action by the Division in its treatment of the evidence. The mere recital of these examples demonstrates that the District Court did not engage in "weighing of the evidence" or "de novo" review of the issues presented. Clearly, they demonstrate er-

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52. Here, the reviewing court concluded that "[t]he basic rudiments of fairness were simply not applied" (App. 1314).

rors of law. A brief description of some of these errors are set forth below:

1. Protestants' Transit-Time Studies v. Those Of Applicants

A. The Division Report: The Division concluded that the protestants' transit-time studies "do not present as valid a picture as those introduced by those witnesses supporting the applications" on the stated grounds "(1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers . . . ." (App. 129).

B. *The Court's Findings*: The District Court found "[t]here is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments . . . ." (App. 1310). The court also found "[t]he conclusion that these studies are entitled to little weight because they 'relate to short periods of time' is completely arbitrary" because "[m]any covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action" (App. 1311).

The District Court found that the rejection by the Division of the protestants' traffic studies "on

the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis" because the Commission "made specific findings in favor of applicants based on applicants' studies that covered similar or later periods of time," and concluded that "[a]gain, one standard was applied to applicants and a different standard to protestants" (App. 1311).

The District Court found that the Division's "condemnation of protestants' studies on the ground that some 'cover traffic for specified shippers' is particularly unwarranted" because the "applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses" and the protestants "presented shipping documents taken from their files evidencing specific service rendered *for those same shippers*" (App. 1311) (emphasis added).

The court concluded that "there is no rational basis" for the Division to consider "such evidence presented by applicants and its refusal to consider such evidence presented by protestants" (App. 1311).[53]

2. Applicants' Transit-Time Studies—Parts Favorable To Applicants v. Parts Unfavorable To Applicants

A. The Division Report: At one point in its report the Division made critical findings favorable

53. Private appellants charge the court with improperly finding that the Division compared protestants' studies with those "presented by Applicants," saying that the comparison was made only with the "studies of supporting shippers" (Brief 40). This is a frivolous play on words. All "studies of supporting shippers" were "presented by Applicants" since applicants sponsored the witnesses who presented the studies.

to Bowman, based upon Bowman's service exhibit (App. 116); but at a subsequent point the Division refused to consider those parts of the identical exhibit unfavorable to Bowman (App. 157).

B. The Court's Findings: The District Court found that "Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals," and that the Division "accepted applicants' evidence as substantiating applicants' ability to perform as proposed" (App. 1295). It also found that protestants pointed out to the Division that the Bowman service exhibit showed that in many instances Bowman "delivered its traffic on time only 55% of the time" and that "Johnson's on-time performance ranged from 22.5% to 58.5%," and that "[t]hese facts were ignored by the Division" (App. 1296-1297).

The court concluded that "[w]hile predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants," and that "the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis" (App. 1312-1313).

3. Supporting Shipper Service Exhibits—Parts Favorable To Applicants v. Parts Unfavorable To Applicants

A. The Division Report: The Division made essential findings favorable to applicants based upon shipper-sponsored traffic studies (App. 126). No mention was made, however, of the composite sum-

maries of such exhibits which demonstrated that, viewed in their entirety, they supported protestants' rather than applicants' position (Exhibits 1839, 1840, 1841, 1942, summarized in Appellees' Initial Brief in District Court, at 123-127).

B. The Court's Findings: The court concluded that this action constituted "arbitrary treatment" by the Division in that it "predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service" (App. 1313).

4. Service Restrictions By Applicants v. Service Restrictions By Protestants

A. The Division Report: The Division condemned protestant carriers for imposing service restrictions in published tariffs (App. 126-127). Yet, many similar, and sometimes identical, restrictions were maintained at the same time by applicants Bowman, Johnson, and Red Ball.[54] Although condemning protestants for the described types of service restrictions, the Division's report did not even mention the same or similar type service restrictions maintained by applicants.

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54. These restrictions were contained in official tariffs filed with the Commission, and were called to the Division's attention by protestants in Ex. 1664, Apps. 40, 44 and 46. A summary appears in appellees' initial brief in the District Court, at 131-133.

B. The Court's Finding: The District Court found that the Division's report "specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman, and Johnson" (App. 1297). The court concluded: "Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants." (App. 1313).

5. "Official Notice" Of Facts Detrimental To Protestants v. Refusal Of "Official Notice" Of Facts Detrimental To Applicants In The Same Publication

A. The Division Report: On its own motion, the Division took official notice of the Fall 1971 Edition of the American Motor Carrier Directory for the purpose of showing that protestant Cole-Dixie had closed one of its terminals since the hearing (App. 151, n. 42).

In selecting Red Ball as one of the applicants to which authority was granted, the Division relied heavily upon the fact that Red Ball maintained 92 terminals (App. 132).

Although requested to do so by protestants, the Division refused to take official notice of the same edition of the same publication which showed that Red Ball had closed 35 of its 92 terminals.

B. The Court's Findings: The court found that "[o]n its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing.

> At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. . . . The basic rudiments of fairness were simply not applied" (App. 1298, 1314).

The above examples illustrate the court's findings and conclusions.[55] Clearly they demonstrate that the court did not "weigh the evidence." The court found, as a matter of law, that the Division's action, findings and conclusions were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

III

Other Deficiencies in the Division's Decision

The reviewing court noted other substantial deficiencies in the Division's decision, not previously discussed. They include the following:

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55. They are by no means exhaustive. For example: "Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division" (App. 1313-1314).

A

The Court Properly Held That the Commission Failed to Give Consideration to the Total Carrier Service Available at the Time of Its Decision

One of the most egregious errors in the Division's report is the absence of any evaluation of the total carrier service available at the time of its decision. The fundamental issue involved the adequacy of existing service. The applications were filed in 1965. The hearing ended in 1967. The Division served its report in early 1972, and its final two-to-one vote approving the applications was dated September 1, 1972 (App. 101, 363).

In its report the Division ruled that three additional carriers were needed to supplement the existing service and, further, that *more than three would be detrimental to the public interest* (App. 131). At no point, however, did the Division make any analysis or evaluation of the total service available at the time of its decision (App. 1299, 1314). The applicants based their proposals primarily on the proposition that there was not a sufficient quantity of *single*-line service available and that the abundant *joint*-line service available could not adequately meet the needs of the public due to the inherent disadvantages of joint-line operations.[56] The Division's only evaluation of the total service available appears in its summary of evidence presented by Johnson: "comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth." This finding was followed immediately by a correlative finding: "In this re-

56. "Joint-line" service embraces all types of movements where two or more carriers are involved, including the widely prevalent practice by which carriers exchange trailers in order that shipments may move in through, coordinated service without physical handling en route.

spect it is noted . . . that on the whole the population . . . has increased substantially between 1960 and 1970" (App. 122-123).

It is significant that this, the only evaluation of total service available, was made for the purpose of testing the adequacy of such service "to meet the demonstrated growth" in the involved areas. The problem with this is that the Division's conclusion that "comparatively there is a paucity of single-line service available" was based upon a study made prior to the start of the hearing in March of 1966.[57] This *1966* status was then used to determine its adequacy "to meet the demonstrated growth" that had taken place through *1970*. Ignored were the tremendous changes in available service that resulted from post-hearing grants of new authority, mergers, and consolidations approved by the Commission.[58]

Contrasting sharply with the Division's treatment of this subject is the examiners' detailed analysis of service available at the time their report was issued in 1969 and their evaluation that a "multiplicity" of such service existed (App. 871-872, 883-884).

Following issuance of the examiners' report, additional changes occurred, but the Division consistently ignored them. They also ignored the changes considered in the examiners' evaluation and, instead, concluded that the ap-

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57. Exhibit 62; summarized, in part, in appellees' initial brief in the District Court, at 141-145.

58. These comments consider only the expansion in *carriers* available and do not give effect to each carrier's increase in vehicles operated. For example, in the lower court appellant Lorch supplied statistics showing that during 1960-1971 for-hire truck registrations in the southwest increased by 70 percent and in the southern area by 88 percent (Lorch Brief 427). The examiners recognized that existing carriers "have increased their facilities and services with the growing needs of shippers in the areas they serve" (App. 889).

plications should be granted because of the "paucity" of service that was available in early 1966.

The significance of these changes is demonstrated by the following examples:

SINGLE-LINE[59] SERVICE AVAILABLE

Between Atlanta and	At time of Hearing	At time of Examiners' Report	At time of Division's Report
Dallas	3	7	13
Houston	3	7	11
Jackson	3	6	8
Kansas City	5	5	10
Baton Rouge	1	(Not Shown)	7

After recognizing its duty to give consideration to such changes and the propriety of taking official notice of its records reflecting such changes, the Division stated that "accordingly" changes involving *protestants* "have been noted in appendix G" and changes involving *other carriers* "although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determination"[60] (App. 106). These recitals appear in a section entitled "Preliminary Matters," but in its "Dis-

59. This comparision does not include the multiplicity of *joint*-line motor and rail service available. A more comprehensive analysis appears on pages 142-145 of appellees' intitial brief before the District Court.

60. The Division's assertion that facts not placed in evidence nor made the subject of official notice had "nevertheless been accorded full and careful consideration" constitutes legal error. "Facts conceivably known to the Commission, but not put in evidence, will not support an order." *Baltimore & O.R. Co.* v. *United States* ("The Chicago Junction Case"), 264 U.S. 258, 263 (1924). "All parties must be fully apprised of the evidence submitted or to be considered. . . ." *ICC* v. *Louisville & N.R. Co.*, 227 U.S. 88, 93 (1913).

cussion and Conclusions," the Division *made no evaluation of the total service then available.* The reviewing court therefore noted that the Division's preliminary recital that it had given "full and careful consideration" to these matters "cannot be accepted as a substitute for adequate findings." In view of the Division's refusal to evaluate the total service available at the time of its decision, the court concluded that it "cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public" (App. 1314).

Appellants cite fragmented references in the report, and aver that the Division did, in fact, consider post-hearing changes (Government Brief 28, 34-35; Priv. App. Brief 40, 57-58). Their citations identify specific references to post-hearing changes appearing (a) in the body of the report, (b) in an appendix relating to protestants, and (c) in an appendix summarizing the pleadings.

The references to the *pleadings* do not, of course, constitute findings of fact.[61]

The references to changes involving protestants, set forth in the appendix, were not mentioned, much less considered, in the body of the report.[62]

The references in the report itself identify post-hearing expansions involving *applicants*—facts favorable to the

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61. Justice Cardozo pointed to the impropriety of using averments as a substitute for findings, stating: ". . . they are not a finding at all, but a summary of the grounds of protest, an outline of the pleadings, or what amounts to the pleadings, before an administrative body." *Mississippi Valley Barge Line* v. *United States*, 292 U.S. 282, 289 (1934).

62. "At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision" (App. 1299).

applicants. Only one such reference mentions protestants, that being a completely unwarranted conclusion that the post-hearing merger of protestants United and Campbell resulted in "rendering the issue as to the vulnerability of the former's operations moot"—a conclusion favorable to applicants (App. 157, n. 44). The Commission ignored the true impact of the United-Campbell merger which changed the joint-line service of those protestants into a new single-line service between Atlanta and most of the key cities involved.[63]

It is not possible to read the Division's report and discern therefrom the fact that the Atlanta-Dallas single-line carriers had increased from 3 at the time of the hearing to 13 at the time of the decision. If the Division, in the exercise of its expertise, deemed 3 (in 1966) to constitute a "paucity," it should have explained why it did not agree with the examiners that 7 (in 1969) constituted a "multiplicity," or why 13 (in 1971) were not sufficient. When the Division concluded that 3 more were needed, and that 4 more would be excessive, the report would indicate that it was thereby increasing the total from 3 to 6, whereas, in fact, it was authorizing an increase from 13 to 16.

Since this involved such a basic issue, it is difficult to understand how such an obvious error could be made. Per-

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63. In discussing a different point, the Government also refers to a post-hearing change in appellee Braswell's operations, quoting from a finding in the report that Braswell's "authority in Alabama is limited to only the major points of Birmingham and Montgomery" (Brief 25-26, n. 11). Here, Government counsel inadvertently engages in the identical type of "advocacy" followed by the Division. This *erroneous* finding, relied upon by the Division in its report (App. 152), is in direct contradiction of the more detailed finding buried in the appendix devoted to protestants. There, the Division *adopted* the examiners' *correct* finding that Braswell's new authority embraces *all points* on two routes completely traversing Alabama, with service at "141 points in Mississippi, Alabama and Georgia" (App. 354, n. 17; 1265-1266, n. 10).

haps undue reliance was placed upon applicants' briefs and pleadings. In their *final brief* before the Commission applicants argued that the case "can and should be decided on the basis of the record as it now stands" and that since "there is no evidence on this record" concerning operations pursuant to post-hearing certificates and mergers, such changes should be disregarded.[64] At the same time, applicants successfully opposed appellees' efforts to reopen the proceedings for proof of service rendered under new authority.[65]

Also, in its final brief before the Commission, Johnson continued to assert the position it assumed at the outset of the hearing that "Ryder and Roadway are the only single-line Johnson protestants having significant service between points Johnson proposes to serve and points in its present territory. . . ." Indeed, in its Jurisdictional Statement, Johnson quoted excerpts from its exceptions before the Commission that:

> "The only protesting carriers having significant single-line service in the areas presently and proposed to be served by Johnson are Ryder and Roadway" (J. S. Johnson, A-4).

Certainly, Johnson would not have this Court gain the erroneous impression that Ryder and Roadway are the only "protesting carriers having significant single-line service in

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64. See, *e.g.*, Johnson's Reply to Petitions for Reconsideration, at 63.

65. See, *e.g.*, Replies to Petitions for Further Hearings filed by Bowman, dated April 30, 1969 and April 1, 1972, by Johnson, dated April 21, 1969, and by Red Ball, dated April 18, 1969. The examiners and the Division overruled appellees' repeated efforts to have the proceeding reopened for proof of changes in service available. Both reports explained that reopening was not necessary since official notice would be taken of such changes (App. 898, 106).

the areas presently and proposed to be served by Johnson."[66] These applicants propose, for example, to duplicate the present service between Atlanta and Dallas, Houston, Jackson and Baton Rouge, and thereby become the 16th, 14th, 11th and 10th single-line carriers, respectively, between such points.[67]

The conclusion is inescapable that the two-to-one vote of the Division in this case *did not result from the exercise of an informed, impartial judgment applied to facts placed in evidence or officially noted!*

B

The Court Correctly Found That the Commission Did Not Give Proper Consideration to the Adverse Effect of the Grants upon Existing Service

The Court properly noted that "[t]he Examiners concluded . . . that approval of *any* of the applications would result in a *deterioration* rather than an improvement of existing carrier service, contrary to the public interest" (App. 1280) (emphasis added). The Division, on the other hand, found that "protestants have not shown that they would be seriously adversely affected by such grants" (App. 157). The examiners' findings of fact relating to

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66. Johnson's reference embraces only "*protesting* carriers," but protestants to the Johnson application include 7 *other than* "Ryder and Roadway" that provide "significant single-line service," for example, between Atlanta (presently served by Johnson) and Dallas (proposed to be served by Johnson) (App. 324, 329, 332, 338, 341, 342, 354). Other "protesting carriers" providing similar service between such points also opposed the Bowman and Red Ball proposals to duplicate such service (App. 321, 326, 346).

67. Private appellants complain (Brief 57, 58) because certain *appellees* "received additional common carrier authority during the pendency of this proceeding as late as 1970," but the Commission should not be concerned with who received the authority as long as the public is served.

this issue were expressly adopted by the Division[68]; accordingly, the Division and the examiners relied upon identical facts to reach opposite conclusions. Based upon its study of the two reports, the court found that the Division's "conclusion is directly contrary to the Division's findings of fact . . ." (App. 1316).

In challenging this finding by the reviewing court, the private appellants base their argument on a serious misrepresentation of the facts. They state that "the examiners . . . found such adverse effect only if all 10 applications were granted" (Brief 48). The facts are that the examiners *repeatedly* found that approval of "*any*" or "*any one*" of the applications would cause deterioration in existing service, thereby adversely affecting the public interest (App. 889-892). Since this error constitutes the only basis for such appellants' criticism of this finding by the reviewing court, their argument merits no further discussion.

The Government makes the same error (Brief 5). It also points to the Division's finding that "only one carrier, Holloway, had shown that its operations may be seriously affected"[69] (Brief 33). The Government argues that the Division's determination of this issue should not be disturbed since the only evidence detracting from such determination was the Commission's finding "that a loss of any of Roadway's eastbound traffic from Texas origins would result in a further imbalance in its operations (App. 345) and that a diversion of freight from Campbell's terminal points would result in deterioration of Campbell's ser-

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68. These findings appear in Appendix D to the examiners' report (App. 1191-1269), brought forward verbatim in the Division's report as Appendix G (App. 319-358).

69. The examiners used appellees Holloway and Red Line as examples of small carriers that would be "put out of business" if only *one* of the applications were granted (App. 889-890).

vice at smaller points in Mississippi (App. 339)..." (*Ibid.*). There is simply no way to explain why the Government, in acknowledging this conflict between the Division's findings and its conclusions, referred *only* to the findings as to Roadway and Campbell. *Almost identical findings* were made by the Division as to Alamo (App. 323), Missouri Pacific (App. 328), Gordons (App. 330), Mercury Motors (App. 332), West (App. 335), Deaton (App. 335), Floyd & Beasley (App. 376), Pilot (App. 338), Mason and Dixon (App. 338), East Texas (App. 342), Transcon (App. 343), Herrin (App. 346), ET&WNC (App. 347) and United (App. 348).[70] Specific examples of some of these findings are quoted in Appendix III hereto.

Since *none* of these findings are mentioned in the Division's discussion of the case, and since they are in direct conflict with the Division's conclusion, the reviewing court correctly found, as a matter of law, that the Division's conclusion was not lawful since it was "directly contrary to the Division's findings of fact" (App. 1316).

IV

The Reviewing Court's Decision Is Not Deficient in Any Other Respect

Although appellants criticize various statements appearing in the reviewing court's opinion, such criticisms are not well founded. In many respects they illustrate the

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70. Similar findings were also made as to ICX (App. 322), SW Transp. (App. 322), Central (App. 323), Red Arrow (App. 323-324), T.I.M.E.-DC (App. 763-764), Yellow [Watson-Wilson] (App. 326), Trans-Cold (App. 327-328), Red Line (App. 328-329), Southern Forwarding (App. 331), Mid-South (App. 331), Wilkerson (App. 331), Atlas (App. 331-332), Akers (App. 332), Mercury Freight (App. 333), Howard Hall (App. 334), Baggett (App. 336), GFA (App. 337), Cole-Dixie (App. 340), Brown (App. 341), Ryder (App. 350) and Braswell (App. 354-356).

probing nature of the court's in-depth study of the record, and in no respect do they establish any deficiency in the court's analysis of the agency action.

The principal criticisms advanced by appellants, not previously discussed, will be considered.

A

The Reviewing Court Did Not, As Charged by Appellants, Invalidate the Agency Order Because the Record Was "Stale"

Another misstatement of the record appears on page 54 of the private appellants' brief. They say that the reviewing court invalidated the agency order because "the record was 'stale.'" To support this charge they quote from the court's *October 4, 1973* opinion which did not deal with the merits but with the Government's motion to amend judgment. They erroneously attribute such quotation to the *September 11, 1973* opinion on the merits. In neither opinion was the quoted term "stale" used by the court. More importantly, the court did *not* find that the Division erred in rendering its decision on a "stale" record. *After* finding the agency's action invalid for the many reasons discussed, the court specified the age of the record as one of several reasons why remand for further proceeding on the present record would impede rather than facilitate the Commission's further consideration of the issues of public convenience and necessity.[71] See *infra*, p. 63. *et seq.*

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71. See App. 1319, para. 29; App. 809-823.

B

Private Appellants Improperly Charge the Reviewing Court with "Mechanically Adopting Verbatim" Appellees' Proposed Findings

In their Jurisdictional Statements the private appellants charged the reviewing court with "mechanically adopting verbatim the proposed findings and conclusions of one set of parties. . . ."[72] Jurisdiction was *not* noted as to this issue; however, such parties continue to argue, both expressly and by innuendo, that the court improperly adopted appellees' proposed findings and conclusions.[73] During oral argument all parties agreed to submit proposed findings of fact and conclusions of law (App. 571, 580, 581, 856, nos. 75, 77).[74] The court considered them all and, in its opinion, adopted appellees' after finding them to be "correct" (App. 1282).[75]

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72. See question no. 1, Jurisdictional Statements of Lorch, at 3-4; Bowman, at 3-4; Johnson, at 3; and Red Ball, at 2-3.

73. *E.g.*, brief of private appellants, at 5, 10, 12, 20, 26, 34, 37-38.

74. This procedure was consistent with local practice; the Federal Rules of Civil Procedure; orders of the court; the guidelines of the Eighth Circuit set forth in *Bradley* v. *Maryland Casualty Co.*, 382 F.2d 415, 423 (1967); and holdings in *United States* v. *Crescent Amusement*, 323 U.S. 173 (1944), and *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964). Although appellees submitted proposed findings and conclusions (App. 697), private appellants submitted fully drafted opinions for signature by the judges (App. 615, 645, 647, 695).

75. The court wrote its own opinion rather than "mechanically adopting verbatim" appellees' proposals, as improperly charged by private appellants. *E.g.*, appellees proposed a single sentence recording the court's refusal to review *Jones* (App. 699); the court wrote over five pages (App. 1320-1325). The court's independent research is reflected by its quotation from, and citation to, cases not quoted or cited in appellees' proposals and by the changes it made in appellees' proposed conclusions (App. 1306-1307, 1308, 1320).

In continuing, improperly, to argue this "issue," private appellants cite *Ayrshire Collieries Corp.* v. *United States*, 331 U.S. 132, 138 (1947), and make the unwarranted assertion that the court below "missed the very essence of the judicial function in this case—the actual adjudication of the issues of law and fact" (Brief 37). *Ayrshire* is inapplicable. It involved the propriety of a decision by two judges of the three-judge panel, one judge being ill and unable to participate. *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 169 (1962), is also inapplicable. The "counsel's discretion" referred to therein was "appellate counsel's *post hoc* rationalization for agency action," and was properly ignored by the Court. All of the other assertions by such appellants relating to this "issue" are fully argued in appellees' Motion to Dismiss and Affirm at 17-22.

V

The Reviewing Court Did Not Preclude Further Consideration of the Substantive Merits of Public Convenience and Necessity

The specific allegation of error charged by the Government is that "the District Court erred in precluding further Commission consideration of the substantive merits of the public convenience and necessity issues," followed by the argument that this case "should" have been remanded for further Commission proceedings[76] (Brief 36-42). First, the District Court in no way precluded further Commission consideration. It entered a judgment that "suspended, annulled and set aside" those portions of the Commission's

76. Significantly, the Government now suggests only that if the reviewing court "believed evidence presented by appellees was entitled to greater weight, the case should have been remanded" (Brief 36). No contention is made that remand should follow where the agency's action was arbitrary or capricious or without rational basis.

order that authorized issuance of Certificates of Public Convenience and Necessity to appellants Bowman, Johnson and Red Ball (App. 739-740). The judgment did no more than enjoin the issuance of the specific certificates authorized in such order. The District Court, in declining to amend such judgment, stated:

> "The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid . . . . The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's prerogative to exercise its administrative functions." (364 F. Supp., at 1272; App. 822).

The Commission remains free to consider the substantive issues of public convenience and necessity at any time and, therefore, its delegated powers have been in no way usurped.[77]

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77. As the opinion below makes clear, the Commission was never without power to act not inconsistently with the court's jurisdiction. See *American Farm Lines* v. *Black Ball Freight Service*, 397 U.S. 532 (1970).

Secondly, the Government, for the first time, argues that this case "should" have been remanded. Following the District Court's entry of judgment on September 11, 1973, the Government filed its motion for amendment of that judgment "for the reason that such form of judgment is a matter beyond the jurisdiction of the Court in the circumstances presented" (App. 795). The Government's memorandum in support of its motion asserted that the injunction was "beyond the power of the Court" (App. 797); 28 U.S.C. § 2325 is to the contrary. Neither private appellants nor the Government took that position at any time prior to the motion, and the Government does not take that particular position here. The jurisdictional contention argued below has been abandoned, and a new remand question is now being raised. The Government should be foreclosed from raising the new issue here. The question that the proceeding *should* have been remanded is not properly before this Court inasmuch as it was not raised below. See *United States* v. *Arnold Schwinn & Co.*, 388 U.S. 365 (1967); *Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317 (1967).

As to the Government's argument that this case *should* have been remanded, there is no question that it was within the power of the District Court to do so. *American Trucking Ass'ns, Inc.* v. *United States*, 364 U.S. 1 (1960). It is equally clear that remand may be neither necessary nor appropriate. *ICC* v. *Atlantic Coast Line R. Co.*, 383 U.S. 576 (1966). Because the statutes rarely address themselves to the issue of remand, the law in this area is mainly decisional.[78] Thus, the Government may cite cases including *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 17 (1952),

78. *E.g.*, the Natural Gas Act, 15 U.S.C. § 7171, specifically provides for remand procedures. The Interstate Commerce Act, 49 U.S.C. §§ 17(9), 305(g), 305(h), applicable here, makes no mention of remand.

where this Court recognized as a "guiding principle" that the function of the reviewing court ends when an error of law is laid bare. Similarly, appellees may cite *International Mine Workers* v. *Eagle-Picher Co.*, 325 U.S. 335 (1945), where this Court held that it could refuse an application for remand to the agency or, *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543, 550 (CADC 1969), where the court held that it would serve "no useful purpose to ask the Commission to reconsider the Examiner's action and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." Appropriateness of remand must be decided on a case-by-case basis. The guiding principle is: if remand would serve a useful purpose, then it is appropriate, *but not otherwise.*

No suggestion was made for remand at any time by any party until the Government's request following the judgment of the District Court. The private appellants have never applied for remand, and no one *ever suggested to the District Court that remand would serve a useful purpose.* The private parties developed the record before the Commission; and if remand would serve any useful purpose, it is certainly logical to look to such parties to contend and demonstrate that remand would be appropriate. However, only the Government suggests, for the first time, that any useful purpose would be served—a contention entirely at odds with the position of the private appellants.

The distinction between cases ordering remand and those finding remand inappropriate lies in each court's determination of the question of useful purpose. The District Court set forth at some length its reasons for its considered refusal to remand the case. First, the court rejected the Government's contention that it lacked jurisdiction to enter

the judgment wherein it made no provision for remand, citing 49 U.S.C. § 17(9); 49 U.S.C. §§ 305(g) and (h); 5 U.S.C. § 706; 28 U.S.C. § 1336a; 28 U.S.C. § 2325 (App. 811-812). That contention, which was the *only* remand issue below, was fully treated.[79] While the District Court recognized "that in a proper situation, a reviewing court should remand a proceeding to the Commission" (App. 814), it held that this case did not present such a situation. Recognizing that the applicants could at any time institute new or additional proceedings with the Commission, it was the court's opinion that the administrative conduct reflected in this record is beyond repair, and, therefore, "the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity" (App. 820, 822).

As the court correctly noted, it had before it a voluminous record dealing with the applications of 10 motor carriers. Its concern was with only three of those carriers, appellants here, and it noted that "there are tremendous portions of this record that are wholly unrelated to the applications of Red Ball, Bowman and Johnson. This is a unique situation resulting from the Commission's consolidation of ten major applications, and is a significant fact bearing upon the court's consideration of the Government's motion"[80] (App. 814). Noting this fact, the court found

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79. During the pendency of action before the District Court, no defendant challenged the jurisdiction or the authority of the court until the Government's final motion. Further, no defendant contended that the complaint requested relief beyond the jurisdiction of the court.

80. *E.g.*, counsel for Johnson, in response to questions from the court, placed emphasis on the fact that much evidence of record had no relationship to the Johnson, Bowman and Red Ball case (App. 536). Specifically, 506 of the 933 public witnesses were presented by applicants *other* than the three here involved. Some witnesses supported more than one applicant; *e.g.*, 746 supported the seven applicants *other* than Johnson, Bowman and Red Ball (App. 868).

it inappropriate to remand inasmuch as it "would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity" (App. 814). Further, the court properly found that a remand would put before the Commission a burdensome record containing voluminous extraneous matters, as well as five and six year old facts, which would not be helpful in making a further determination of such issue. For these reasons, and because changes in circumstances made it necessary for the Commission to give consideration to the current situation, the court properly recognized that use of the present record would "impede rather than facilitate" further consideration (App. 815-816). No one contended otherwise!

This situation, as noted by the court, is analogous to that in *Campbell Sixty-Six Express, Inc.* v. *United States,* 258 F. Supp. 529 (W.D. Mo. 1966). There, the court found the Commission's action arbitrary and capricious and set the order aside. There was no remand and there was no appeal. The applicant in that proceeding subsequently filed a new application and a certificate was granted (App. 818). Applicants here have been free at any time to follow the same course. This illustrates that remand is not always necessary nor is it always appropriate.

That remand is not appropriate in all cases is amply demonstrated, not only by the cases set forth above, but also by *Zuber* v. *Allen,* 396 U.S. 168 (1966); *Shannon* v. *United States,* 219 F. Supp. 781 (W.D. Tex. 1963), *aff'd* 377 U.S. 311 (1964); *Pacific Coast Wholesalers Ass'n* v. *United States,* 81 F. Supp. 991 (S.D. Cal. 1949), *aff'd* 338 U.S. 689 (1950); *Garrett Freightlines, Inc.* v. *United States,* 324 F. Supp. 575 (Idaho 1971); *Ashworth Transfer, Inc.* v. *United*

States, 315 F. Supp. 199 (Utah 1970); *Pennsylvania R.R.* v. *United States*, 202 F. Supp. 584 (E.D. Pa. 1962).[81]

The Government's attempt to distinguish *Atlantic Coast Line* and *Zuber* fails. It must be remembered that, in the instant case, the request for remand was made only after judgment and then only on jurisdictional grounds. The question raised before this Court was not present in the District Court, and, for that reason alone, is not properly in issue here. In any event, those two cases recognize that in some instances a remand is required but that in other instances the court can dispose of the matter without any necessity for remand.

In view of the "unique situation" involved (App. 814), the case at bar is strikingly similar to *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543, 550 (CADC 1969), where it was stated by Judge, now Chief Justice, Burger:

> "The record now before use leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that *it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision*

81. Permanent injunctions were entered against Commission orders, without remand, in *Pacific Coast*, *Shannon*, *Garrett*, *Ashworth*, and *Pennsylvania R.R.* No appeal was taken in the latter three cases, and *Pacific Coast* and *Shannon* were affirmed on appeal. In *Zuber*, involving an order entered by the Secretary of Agriculture, the Court of Appeals (402 F.2d 660) found no reason to remand, and this Court found remand inappropriate, 396 U.S., at 196.

and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." (emphasis added).

FCC v. *Pottsville*, 309 U.S. 134 (1940), and *FPC* v. *Idaho Power Co.*, 344 U.S. 17 (1952), relied upon by the Government, merely state the "guiding principle" of remand.[82] They do not strip a reviewing court of its discretion. It is the exclusive function of a reviewing court to determine whether remand will serve a useful purpose. The Government fails to explain what useful purpose will be served, nor did it even attempt to do so in the District Court. The private appellants, on the other hand, admit by their silence that no such purpose will be served, thus agreeing with the District Court.

The District Court has considered the issue of whether a useful purpose will be served by remand. And the District Court, in its considered judgment, determined that remand would "impede rather than facilitate" further consideration of the issues. The decision was a proper exercise of the court's discretion and should not be disturbed.

As in *Office of Communications of the United Church of Christ*, the record in the instant case is beyond repair. It contains "tremendous portions" of irrelevant and im-

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82. *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156 (1962), cited by the Government for procedure to be followed when changes occur, involved a change in statutory law subsequent to the Commission decision, having a direct effect on the decision.

material facts and improper issues[83] which would indeed "impede rather than facilitate the Commission's consideration of any further proceedings involving the present and future public convenience and necessity" (App. 814). For these reasons, and because it was an appropriate exercise of the court's discretion, the District Court properly declined to amend its judgment.

VI

The Court's "Usual Rule of Noninterference" Is Applicable

Unquestionably, the reviewing court made a comprehensive, in-depth review and a fair assessment of the record as a whole. Accordingly, this Court's "usual rule of noninterference" is applicable.

While disposing of this case, the District Court was acting as a statutory "reviewing court" pursuant to § 706 and 28 U.S.C. §§ 2321-2325. *Universal Camera Corp.*, 340 U.S., at 491, holds that "[w]hether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of" such reviewing courts. This Court's "power to review the correctness of application of the . . . standard ought seldom to be called into action." *Ibid.* Specifically, "[t]his Court will intervene only in what ought to be the rare in-

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83. New and improper issues, "not presented to the Examiners," were injected by the intervening shippers. "The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration" (App. 1302). Private appellants suggest that such issues were not, in fact, injected because they were contained in a pleading "never accepted for the record" (Brief 43; Lorch J.S. 13-14). They do not mention their other pleadings and briefs, repeating the same contentions, that *were received*. See, *e.g.*, Lorch's Reply to Petitions for Reconsideration, at 5 and Petition to Supplement Exceptions, at 3.

stance when the standard appears to have been misapprehended or grossly misapplied." *Ibid.*

In *NLRB* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 503 (1951), decided the same day as *Universal Camera Corp.*, this Court said:

> "This is not the place to review a conflict of evidence nor to reverse a . . . [reviewing court] because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a . . . [reviewing court] under the new dispensation finds the . . . [agency's] order unsubstantiated. In such situations we should 'adhere to the usual rule of noninterference where conclusions of . . . [reviewing courts] depend on appreciation of circumstances which admit of different interpretations.' Federal Trade Com. v. American Tobacco Co., 274 U.S. 543, 544."

Universal Camera Corp. and *Pittsburgh S.S. Co.* involved questions of substantiality of evidence *vel non*. But clearly those factors underlying the "usual rule of noninterference" make it equally applicable to decisions involving the arbitrary or capricious standard. The substantial evidence standard and the arbitrary or capricious standard are both questions of law.[84] And just as the re-

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84. Section 706 recites that, *inter alia*, "the reviewing court shall decide all relevant questions of law" and then enumerates the "questions," including the substantial evidence standard and the arbitrary or capricious standard. In addition, the Senate and House Reports accompanying the APA state that § 706 "provides that questions of law are for courts rather than agencies to decide in the last analysis and it also lists the several categories of questions of law." S. Doc. No. 248, 79th Cong., 2d Sess. 214, 278 (1946).

viewing court must consider the record as a whole to apply the substantial evidence standard, so must it do so to determine whether the agency violated the arbitrary or capricious standard. The application of both standards calls for the considered judgment of the reviewing court based upon its "evaluation" of the whole record, and its "appreciation of circumstances which admit of different interpretations." Neither standard is cut and dried; neither, a mere litmus test. Just as determination of substantial evidence, *vel non*, "has [been] placed in the keeping of" the reviewing court, so also has the arbitrary or capricious standard.

Except in " 'rare instance[s] when the standard [of review] appears to have been misapprehended or grossly misapplied'," this Court need only find that the reviewing court "made a 'fair assessment' of the record." *FTC* v. *Standard Oil Co.*, 355 U.S. 396, 400 (1958). Accord, *e.g.*, *Golden State Bottling Co., Inc.* v. *NLRB*, 414 U.S. 168, 174 (1973); *Communist Party* v. *Subversive Act. Cont. Bd.*, 367 U.S. 1, 69 (1961); *Peurifoy* v. *Commissioner of Internal Revenue*, 358 U.S. 59, 61 (1958); and *NLRB* v. *American Nat'l Ins. Co.*, 343 U.S. 395, 410 (1952).

After an in-depth and "fair" review of the record as a whole, based upon an evaluation of that record, the District Court found the agency action arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. This Court should therefore adhere to its usual rule of noninterference, even though this Court, if making an independent review, might "find the record tilting one way rather than the other."

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

DON A. SMITH
THOMAS HARPER
P. O. Box 43
Fort Smith, Arkansas 72901

WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105

WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D. C. 20004

PHINEAS STEVENS
P. O. Box 22567
Jackson, Mississippi 39205

PHILLIP ROBINSON
P. O. Box 2207
Austin, Texas 78767

M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees

August, 1974

APPENDIX I

Specific Exceptions Filed by Private Appellants to the Examiners' Report

APPENDIX I

The private appellants filed exceptions to the examiners' report pursuant to the requirements of Rule 96 of the Commission's Rules of Practice.[1] The exceptions filed by each such appellant are as follows:

Johnson:[2]

The Examiners erred in:

(1) generally merging throughout their recommended report their consideration, findings, and conclusions respecting the evidence relating to the Johnson application and other applications consolidated herein and in thereby failing to evaluate and make adequate findings and conclusions relating to the Johnson application as a separate and independent matter;

(2) finding, on the basis of their erroneous treatment of the applications as a group, that there is no public need for the service proposed by the Johnson application because existing service is adequate; and

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1. Rule 96-Exceptions to officer's report.

"(a) *Generally.* Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relied upon to support the exception and a corrected statement must be incorporated." 49 C.F.R. 1100.96(a).

2. Johnson Exceptions, March 24, 1970, at 4.

(3) concluding on the basis of their erroneous treatment of the applications as a group, that the benefits of the service proposed by the Johnson application would be "far outweighed by the serious adverse effect" that grant of the Johnson application may have upon existing carrier services.

Bowman:[3]

The Examiners erred:

(1) In considering all 10 applications collectively, and neglecting and failing to relate the testimony to the Bowman proposal or to give effect to the multiple complaints directed toward existing carriers.

(2) In arriving at ultimate conclusions and basing the Recommended Report on broad generalities without specific findings as to the basic facts of record.

(3) In considering and treating the testimony only in relation to commodities shipped to the substantial exclusion of territories and points involved.

(4) In failing to consider the divisible aspects of the Bowman application.

(5) In failing to recommend approval of the Bowman proposal to serve 10 named Mississippi points.

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3. Bowman Exceptions, March 10, 1970, at 12, 13.

(6) In failing to recommend that the service proposed by Bowman to Kansas City, Kansas-Missouri, Springfield and Carthage, Missouri, and Topeka, Kansas, be approved.

(7) In failing to recommend approval of all aspects of the Bowman application.

Red Ball:[4]

The Examiners erred:

(1) In concluding that the 933 public witnesses failed to establish a need for an additional carrier service.

(2) In concluding that a grant of the Red Ball application will have an adverse affect on existing carrier services.

(3) In treating these applications as "all or nothing at all".

Intervening Shippers:[5]

The Examiners erred:

(1) In recommending an economic love feast ("a more cooperative effort and better communication," "exercise of more diligence and care," and "an understanding of the practical problems involved") between carriers and shippers as a substitute for competition.

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4. Red Ball Exceptions, March 10, 1974, at 7, 13, 16.

5. Lorch Exceptions, filed March 23, 1974, accepted, *nunc pro tunc*, March 30, 1970, at 22, 23.

(2) In concluding that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier.

(3) In determining public convenience and necessity by placing considerations of possible detriment to existing carriers through increased competition ahead of benefit to the public, including intervening shippers.

(4) In concluding that "[t]he primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public."

(5) By sidestepping the consideration of "monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public. . ."

APPENDIX II

Examples of Findings and Conclusions by the District Court That the Division's Treatment of the Evidence Was Arbitrary and Capricious, an Abuse of Discretion, and Without Rational Basis

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Note: This appendix sets forth direct quotations from the District Court's opinion as published in 364 F. Supp. 1239. The copy of the opinion included in the printed Appendix prepared by appellants contains numerous typographical errors, some, but not all, of which are listed on the "Errata Sheet" to the Appendix.

APPENDIX II

The opinion of the District Court (364 F.Supp. 1239; App. 1275) has been analyzed for the purpose of setting forth examples of its findings and conclusions that the Division's treatment of the evidence was arbitrary and capricious, an abuse of discretion, and without rational basis. In each instance, the finding is first set forth followed by the related conclusion.

Findings A

The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599 (364 F.Supp. at 1250; App. 1293).

Conclusions A

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious actions (364 F.Supp. at 1259; App. 1310).

Findings B

Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative

of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See e. g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprise only a *few* shipments made over a very extensive period of time," whereas all protestants' studies included *all* shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10). (364 F.Supp. at 1251; App. 1293).

The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possi-

bility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted *ex mero motu,* thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service of more than 120,000 shipments. (364 F.Supp. at 1251; App. 1295).

Conclusions B

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." Mary Carter Paint Co. v. F. T. C., (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States, (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and prot-

estants alike had followed identical established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 389 U.S. 576, 88 S.Ct. 689, 19 L.Ed.2d 775 (1968); Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1972) 1972 Fed.Carr.Cas. ¶ 82,305, case dismissed, U.S.Sup.Ct. Oct. 24, 1972. In its first decision the court stated:

> "Certainly when carriers appear before the commission, they are entitled to know by what standards they are going to be judged * * * and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases—Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooke Matlack, Inc., v. United States, 119 F.Supp. 617 (E.D.Pa. 1954)."

In *Ringsby,* as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in *Ringsby* that there was no rational basis for such action.

. . .

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension—Atlanta, (1966) 100 M.C.C. 482, but in that case the Commission found that:

> "* * * most of the service deficiencies relating to transit times about which the supporting shippers

and receivers complain and which are reflected in their service exhibits *are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise.*" 100 M.C.C. at 493.

Thus, in *Braswell,* the Commission criticized protestants for *failing* to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they *did* present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States, (Tex.1960) 186 F. Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was 'evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications.' There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications. (364 F.Supp. at 1260, 1263; App. 1311, 1317).

Findings C

Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered

by protestants, and that protestants' service was, on the whole, reasonably expeditious. (364 F.Supp. at 1251; App. 1294).

Conclusions C

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. . . . .

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division. (364 F.Supp. at 1261; App. 1313).

Findings D

Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be con-

sidered for the purpose of testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

. . .

The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on applicants and their stated refusal to afford weight to protestants' service exhibits is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, the protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from

a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned. (364 F.Supp. at 1251, 1252; App. 1295, 1296).

Conclusions D

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the *same exhibits* reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman *can* perform the type and quality of service proposed (p. 586) but the *identical exhibits* were found to have *no probative value* when cited by protestants to support their challenge that Bowman *cannot* perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

. . .

In making its decision "the court shall review the whole record or those parts of it cited by a party * * *." 5 U.S.C. § 706. Although some question concerning the court's duty to review the whole record existed prior to

enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N. L. R. B., *supra*. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, 71 S.Ct., at 464, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

> "* * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. *A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried.* Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." Judicial Control of Administrative Act, at 601.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States, (W.D. Mo. 1966) 258 F.Supp. 529. (364 F.Supp. 1260, 1259; App. 1312; 1309).

Findings E

Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued. (364 F.Supp. at 1253; App. 1298).

Conclusions E

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the

same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied. (364 F.Supp. at 1261; App. 1314).

Findings F

After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignored the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants. (364 F.Supp. at 1253; App. 1297).

Conclusions F

. . . The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman

and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence. (364 F.Supp. at 1261; App. 1313).

Findings G

At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by

the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service. (364 F.Supp. at 1253; App. 1298).

Conclusions G

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The state-

ment that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension—Baton Rouge, La., (1969) 108 M.C.C. 485, 489, and Ayers, Extension—Cheyenne, Wyo., (1965) 99 M.C.C. 795, 797. *West* is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. *West* was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West. (364 F.Supp. at 1261; App. 1314).

APPENDIX III

Examples of Findings of Fact in an Appendix to the Division's Report Showing Adverse Effect on the Public Interest

APPENDIX III

Some specific examples of serious adverse effect on existing carriers which the examiners found would result from the grant of any authority and which would be adverse to the public interest, as set forth in Appendix D to their report (App. 1193). The Division adopted such findings verbatim in Appendix G to its report (App. 319):

Plaintiff Holloway: ". . . They are completely satisfied with the service Holloway affords . . . All of the westbound and a large portion of the eastbound traffic of Holloway would be subject to diversion with the grant of the Bowman application." (App. 320-321).

Plaintiff Alamo: ". . . diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area." (App. 323).

Protestant Missouri Pacific and other rail interests: ". . . These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them." (App. 328).

Plaintiff Gordons: ". . . The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. . . . Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. . . . Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles

a total of 1,045,560 miles, much of it between points involved in these applications." (App. 330).

Plaintiff Mercury Motors: ". . . This freight (1,079,150 pounds, producing revenue of $8,764) is subject to diversion to Bowman should the Bowman application be granted." (App. 332).

Plaintiff West Brothers (now Roadway of Miss.): ". . . Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations." (App. 335).

Applicant-protestant Deaton: ". . . Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations." (App. 335).

Applicant-protestant Floyd & Beasley: ". . . Any diversion of its present traffic will seriously affect its financial stability." (App. 336).

Protestant Pilot Freight: ". . . A diversion of freight will be detrimental to Pilot's operations." (App. 338).

Protestant Mason and Dixon: ". . . A grant of the Bowman application will subject a very substantial portion of this traffic (6.5 million lbs.) to diversion." (App. 338).

Plaintiff Campbell: ". . . Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants." (App. 339).

Protestant East Texas: ". . . Any diversion of its present freight which may result from the grant of

these applications will impair its ability to continue its present standard of service." (App. 342).

Plaintiff Transcon: ". . . Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data. . ." (App. 343).

Plaintiff Roadway: ". . . In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (App. 345).

Applicant-protestant Herrin: ". . . A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted." (App. 346).

Plaintiff ET&WNC: ". . . A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. . . This is valuable and necessary traffic and any loss will adversely affect ET&WNC." (App. 347).

Plaintiff United (now Campbell): ". . . Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United." (App. 348).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

Supreme Court, U. S.
FILED
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Nos. 73-1055, 73-1069,
73-1070, 73-1071, and 73-1072

BOWMAN TRANSPORTATION, INC., *et al.*,

Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION

REPLY BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, *ET AL.*

MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Counsel for Bowman Transportation, Inc.

SANDER W. SHAPIRO
JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767

Counsel for Red Ball Motor Freight, Inc.

BRYCE REA, JR.
DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for Johnson Motor Lines, Inc.

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
Washington, D.C. 20006

ROBERT L. JONES, JR.
412 Merchants National
Bank Building
Fort Smith, Arkansas 72901

Counsel for Lorch-Westway Corporation, et al.

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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The keystone of Appellees' argument is that the Three-Judge Court did not weigh the evidence. Brief at 9, 44. That Court's opinion refutes that contention. The Court fashioned a novel standard of judicial review,

without precedent in statute or decision. This standard accommodated improper reweighing of the evidence and rejection of the agency's specialized knowledge and expertise. The Court has reiterated these mistaken views in *Bredehoeft Produce Co. v. United States*, 376 F. Supp. 70, 79 (W.D. Ark. 1974).

Appellees acknowledge that the Court's decision is almost a verbatim copy of Appellees' proposed findings of fact and conclusions of law. Brief at 62, 63.[1] Appellees misstate Appellants' reasons for bringing this matter to the attention of this Court. Appellants' principal challenge is not to the copying itself, but to the errors copied by the Court below from Appellees' proposals. *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656; *Bradley v. Maryland Casualty Co.*, 382 F.2d 415, 423 (8th Cir. 1967) (opinion per Blackmun, J.). Appellees thereby led the Court below into errors which must be corrected if the proper relationship between the judiciary and administrative agencies is to be preserved. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620-621.

1. The Three-Judge District Court Re-weighed The Evidence, And Impermissibly Substituted Its Judgment For That Of The Agency.

The Court stated that "... a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the Court,

[1] The copying is 40 out of 43 pages. Compare App. 1276-1319 with App. 697-738.

where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion." 364 F. Supp. at 1258 (App. 726, 1307). The Court then demonstrates by the very language it used that it re-weighed the evidence stating, *inter alia*:

1. "Our review of the Division's [Commission's] report in light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record.* * *" 364 F. Supp. at 1259 (App. 1309).

2. "There is no rational basis for the Division's *refusal to give weight* to the extensive transit-time studies presented by protestants [Appellees]. * * * The conclusion [by the Commission] that these studies are entitled to *little weight* because they 'relate to short periods of time' is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants' [Appellants'].* * *" 364 F. Supp. at 1259-60 (App. 1310) (emphasis added).

3. "Other evidence presented by applicants' shippers received similar *treatment* by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received *emphasis by the Examiners but no consideration by the Division.*" 364 F. Supp. at 1261 (App. 1311) (emphasis added).

Other examples of the District Court's weighing evidence and where its opinion proves this fact are:

(a) Transit-time evidence supporting Appellants held to be "inferior" and evidence supporting Appellees "superior". 364 F. Supp. at 1251 (App. 1294).

(b) Appellants' performance evidence held to be "inferior". 364 F. Supp. at 1251 (App. 1295).

(c) "Probative value" of similar or "identical" evidence of Appellees not properly recognized by Commission. 364 F. Supp. at 1251 (App. 1295).

(d) Appellees' transit-time studies given too "little weight" by Commission. 364 F. Supp. at 1251 (App. 1295).

(e) Commission refused "to afford weight" to Appellees' service exhibits. 364 F. Supp. at 1252 (App. 1296).

(f) Commission did not give "weight" to Appellees' "most important" evidence on transit-times. 364 F. Supp. at 1252 (App. 1310).

Characterizations of the Commission's "treatment" of the evidence as arbitrary and capricious do not prove it so. A reading of its Report proves that the Commission carried out its statutory function of weighing the evidence, comparing applicants, and determining where lies the public convenience and necessity. This was not arbitrary or capricious action but a careful, thoughtful performance of statutory duty. Appellees' claims of error really come down to the fact that the Commission does not agree with Appellees as to the weight of the evidence. The Court's decision really comes down to the fact that it does not agree with the Commission as to the weight of the evidence.

Agency findings based upon substantial evidence, as were the Commission's findings here, cannot lack a rational basis so as to be arbitrary and capricious. The Commission's Report demonstrates why the District Court did *not* find that the Commission's findings and

conclusions in this proceeding were *not* based upon substantial evidence. This Appellees' Brief concedes. Brief at 14. Under these circumstances, the Commission's findings were not and could not be irrational or arbitrary or capricious.

The Court below was led into grievous error by Appellees who supplied language in which the Court asserted that the Commission did not weigh the evidence properly. The Court's findings are thus factually incorrect. Refusal to give "weight" or giving "little weight" (App. 715) does not mean failure to weigh. The Commission's Report carefully and reasonably weighed, evaluated and explained why it could not treat Appellees' evidence as more persuasive than Appellants'. The Commission wrote a careful and exhaustive Report consisting of 59 pages plus 196 pages of Appendix (App. 101-367). Along with its own summary of the evidence regrouped geographically (App. 182-318), the Commission set forth a summary of all applications (App. 161-170), all pleadings and exceptions (App. 170-181), the Examiners' summary of Appellees' evidence (App. 316-356), a description of regular routes authorized (App. 356-358), and a listing of the increased population to be served (App. 123, 319). A reading of those pages proves conclusively that the Commission exhaustively considered all evidence presented by Appellees and Appellants, in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier applications", with 1009 witnesses presenting 23,423 pages of testimony and 1987 exhibits in 147 days of oral hearings. 114 M.C.C. at 573 (App. 103).

As stated above, the Court below held that the Commission arbitrarily gave no "weight" to Appellees' transit-time studies, which were "the most important part of [Appellees'] evidence", purportedly showing "reasonably adequate protestant service". 364 F. Supp. at 1259, 1261 (App. 1310, 1313). In fact, the "treatment" of this evidence by the Commission is fully supported by reasoning set forth in its Report, and the Commission's "treatment" is worthy of more detailed consideration as it is illustrative of the Commission's careful weighing of the evidence. After a concise summary of these transit-time studies, based upon the detailed summary prepared by the Examiners and set forth in full in Appendix G of the agency decision (App. 319-356), the Commission noted that:

> "* * * . . .[W]hile [these studies] . . . demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants [Appellees], these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration [Shippers]." 114 M.C.C. at 599 (App. 129).

The Court below erroneously stated that:

> "* * * The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important

> by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. * * *" 364 F. Supp. at 1259 (App. 1310).

To set the record straight, both the Examiners and the Commission did find these factors important. The detailed summary of Appellees' evidence prepared by the Examiners does set forth the length of time covered or the dates of the studies, *e.g.*, 114 M.C.C. at 782, 791 (App. 344, 353) (See App. E).[2] The Commission not only presented a concise summary of this evidence. It also incorporated into its Report the full summary prepared by the Examiners. The accuracy of the Commission's summary is not challenged by the Court, which disagreed only with the conclusions drawn therefrom. Surely, no inference of arbitrary conduct by the Commission can be drawn from its action in not restating in full in the body of its Report the details of evidence set forth in an appendix to its Report.

The District Court, in re-weighing the evidence, consistently credited the conclusions of the Examiners over those of the Commission, even though it is beyond question that the ultimate responsibility in such expert

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[2] Of the approximately 200 shippers submitting transit time studies, about 185 covered traffic handled during a period of over one month. Of these approximately 45 covered traffic handled during a period of from 1 to 3 months, about 35 covered traffic handled during a period of from 3 to 6 months, about 75 covered traffic handled during a period of from 6 months to 1 year, and approximately 30 covered traffic handled during the period of 1 year or more.

While only two of the 14 protestants which submitted transit time studies introduced evidence regarding traffic handled in 1965, about 78 of the studies of the supporting shippers covered traffic handled in 1965 (some in addition to that handled in 1966 and some solely for 1965), and at least 5 covered traffic handled in 1964. (See App. E).

matters lies with the Commission. The Court confuses the Examiners' summary of the evidence, with which there is no quarrel, with their conclusions, with which the Commission disagreed. For example, the Examiners referred to the "anomaly" of certain carriers (*i.e.*, Appellant Bowman) having the dual role of applicant and protestant. (App. 753); 364 F. Supp. at 1247 (App. 1287).

This characterization demonstrates the failure of the Examiners to grasp the significance of this proceeding. The Commission sought to meet the expanding transportation needs of the Southeast and Southwest by a consolidation of multiple applications to provide service in these areas, rather than by atomized consideration of these needs on a certificate-by-certificate basis. The Court was induced by the Appellees to fall into the same error. It was for the Commission – not the Examiners or the Court – to exercise its statutory duty in making this expert judgment, which also was carried out in regrouping the deficiencies and needs of the shippers on a geographical, rather than a commodity, basis (App. 182-318). This geographical regrouping clearly established the basis for the Commission's decision that the public convenience and necessity required the additional service demanded by the outpouring of 933 shipper witnesses as well as the basis for the choice of the three Appellant carriers to meet these demonstrated needs. When the evidence is analyzed geographically, clearly these carriers must be selected as best able to supply the need which the public interest demands.

The Court's erroneous interpretation of the Commission's "treatment" of "the most important part of [Appellees'] evidence" reveals the serious distortion of the process of judicial review which occurred below.

The Court's conclusion is a prime example of its use of an improper standard of review. The Commission's consideration of such evidence as transit-time studies is a matter of fact finding properly to be reviewed pursuant to the substantial evidence test. The reviewing Court cannot substitute its judgment for that of the agency by re-weighing the evidence under the guise of the arbitrary and capricious standard. The Court was wrong both in fact and in law.[3]

The Court below simply substituted its own judgment in determining where lies the public convenience and necessity, and refused to recognize the expertise of the Commission. This was the statutory duty of the agency.

2. The Commission Did Consider All Of Appellees' Evidence.

The Court, as proposed by Appellees, stated in its opinion that the Commission did not base its conclusions upon the entire record, or did not "consider" Appellees' evidence. 364 F. Supp. at 1251, 1259 (App. 728, 1294, 1310); Appellees' Proposed Conclusion 10 (App. 777, 1309).[4] Appellees repeat this

[3] As a matter of fact, the District Court repeatedly mischaracterized transit-time studies as those of "applicants", when in fact they were presented by supporting shippers. 364 F. Supp. at 1259-60 (App. 1310-13), 364 F. Supp. at 1261 (App. 1313-14).

[4] Appellees, at page 50 of their brief, argue that "[a]lthough requested to do so by protestants, the Division refused to take official notice of the *same* edition of the *same* publication which showed that Red Ball had closed 35 of its 92 terminals." (Emphasis added). This statement is incorrect. In noting that Cole-Dixie had closed one of its terminals since the close of the hearing, the Commission relied on the Fall 1971 edition of the American Motor Carrier Directory. The evidence concerning the closing of Red

error. Brief at 55, 58-60. The Commission's Report directly refutes this erroneous conclusion, *e.g.*:

> "*The evidence considered in its entirety* is convincing that the additional service so to be authorized will serve a useful purpose, responsive to a public demand and need and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public." 114 M.C.C. at 599 (App. 129) (emphasis added).

And:

> "*Considered as a whole, the record demonstrates* that many of the supporting witnesses are not receiving reasonably adequate service." *Id.* at 599-600 (App. 129-130) (emphasis added).

The Commission also twice referred to its consideration of all the evidence of the Appellees.

> "*The evidence*, the recommendations of the hearing examiners and the pleadings *have been considered*. Inasmuch as no exception is taken to the examiners' summary of the evidence presented by the protestants as to their authorities, equipment, and operations, this portion of the examiners' report is hereby adopted and is set forth in appendix G to this report." (App. 105, 319-356) (emphasis added).

> "*The evidence of the opposing carriers*, as summarized by the examiners, is set forth in appendix G of this report." (App. 128, 319-356) (emphasis added).

Ball's terminals subsequent to the hearing was published in the 1972 edition of the American Motor Carrier Directory which was released after the Commission's report which is dated December 30, 1971. In any case, this matter, along with Red Ball's explanation, was considered at the reconsideration stage.

3. The Evidence Was Mistakenly Weighed By The Court Below Under The Guise Of An Inapplicable Standard Of Review.

Appellees claim that Appellants "take the position that this Court over-spoke itself in" *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402. Brief at 23. Appellees misstate Appellants' position. Appellants' position is that *Overton Park* does not authorize the application of an additional and more rigorous Court weighing of the evidence test to adjudicatory fact findings "in a case subject to sections 556 and 557" of the Administrative Procedure Act. 5 U.S.C. §706(2)(E). The arbitrary and capricious standard cannot be used as a guise under which a reviewing Court in a case based on a formal record may arbitrarily substitute its judgment for that of the agency where, as here, the agency findings and conclusions based thereon are supported by substantial evidence.[5]

The judicial review provisions of the Administrative Procedure Act require that agency action should be set aside if it violates the Constitution or a statute. 5 U.S.C. §706(2)(B)-(C). The same is true where there is no observance of procedure required by law. *Ibid.* §706(2)(D). Trial *de novo* by the reviewing Court, in effect resorted to by the Court below, is only applicable for adjudication not subject to Sections 556

[5]For a summary of this substantial evidence, see Apps. A-D, which outline that evidence with respect to the overall public convenience and necessity (App. A) and to the basis upon which the Commission granted a certificate to each of the Appellant carriers (Apps. B, C, and D). Appellees did not allege in their complaint and have never argued that the agency order was not supported by substantial evidence. Their confused position is illustrated by their statement that the Three-Judge Court "did not find the actions and conclusions of the agency to be supported by substantial evidence, nor did the Court find that the agency made erroneous findings of fact." Brief at 9.

and 557. *Administrative Procedure Act – Legislative History*, S. Doc. 248, 79th Cong., 2d Sess. 214 (1947). *Ibid.* §706(2)(F). *Cf. First National Bank of Fayetteville v. Smith*, 365 F. Supp. 898, 910-911 (W.D. Ark. 1973) (opinion per Miller, J.) (appeal pending).

This leaves the substantial evidence rule and the standard used by the Court below. Appellees claim that "both standards are applicable". Brief at 9. The substantial evidence rule is only applicable to formal hearings on the record and is embodied in the decisional provisions of the Administrative Procedure Act. 5 U.S.C. §556(d) requires that an order issued by formal adjudication must be "supported by and in accordance with the reliable, probative and substantial evidence". This section codifies the rule developed by this Court in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229, with respect to findings of fact. Under this rule, the Commission is not required specifically to consider and rule upon every item of evidence in the record or every contention made by all parties. *Minn. & St. Louis Ry. v. United States*, 361 U.S. 173, 193-194.

Congress intended the Administrative Procedure Act to be read and applied as a whole. *Administrative Procedure Act – Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 194, 216 (1946). Congress could not have intended to make Section 556(d) redundant by the disjunctive provisions of Section 706(2). Indeed, the arbitrary, and capricious standard of Section 706(2)(A) applies to matters "not in accordance with *law*" (emphasis added). The substantial evidence rule, enacted in Section 556(d), on the other hand, applies to findings of fact. *Camp v. Pitts*, 411 U.S. 138, 141-142.

Appellants never have contended that a concept similar to the arbitrary and capricious standard has no

application to a formal adjudicatory proceeding under the Administrative Procedure Act. *American Farm Lines v. Black Ball,* 397 U.S. 532, 538-539; *Interstate Commerce Commission v. Jersey City,* 322 U.S. 503, 514-519. Examples occur where the deciding officer fails to personally consider and appraise the record in accordance with *Morgan v. United States,* 298 U.S. 468, 477-482; where an administrative agency refuses to consolidate mutually exclusive application hearings, *Ashbacker Radio Corp. v. Federal Communications Commission,* 326 U.S. 327, 333; or where an agency refuses to allow a party to formally intervene while permitting them to file briefs and present evidence and oral argument, *Federal Communications Commission v. NBC (KOA),* 319 U.S. 239, 247. Such considerations of agency policy and procedure clearly are not at issue in the instant case.

4. This Court Should Remand With Directions To Affirm The Commission's Order.

Appellees argue, with respect to the Three-Judge Court's failure to remand, that:

> "The judgment did no more than enjoin the issuance of the specific certificates authorized in such order.
>
> * * *
>
> "The Commission remains free to consider the substantive issues of public convenience and necessity at any time and therefore its delegated powers have in no way been usurped." (Brief at 64).

Such statements are consistent with Appellees' failure to acknowledge the cost, in both dollars and time, which each delay in this proceeding has brought upon

the Shippers, to whom Appellees refer as "private Appellants". This dilatory strategy by Appellees culminated in the Three-Judge Court's permanent injunction against, rather than remand of, the Commission's order. Now, after significant but necessary delay in seeking to correct that Court's errors, "private Appellants" are faced with the prospect of a hollow victory if this Court finds for Appellants, but remands to either the Court below or to the Commission, via that Court, for further action. Appellees have nothing to lose by waiting. Appellants have nothing to gain. The real losers are the Shippers, whose needs the Commission sought to meet. Appellants therefore pray that this Court remand with directions to affirm the Commission's decision.

Such a procedure was employed by this Court in *Federal Maritime Commission v. Svenska Amerika Tinien,* 390 U.S. 238. There, as here, the proceedings had been in progress for more than eight years. The reviewing Court there, as here, had taken "the extraordinary course" of failing to remand to the agency for further action. This Court there stated:

> "Since we have found that the Commission's findings and order are supported by substantial evidence and, since there are no other meritorious contentions raised by respondents, we think it is time for a final disposition of the proceedings. The judgment of the Court of Appeals is reversed; and *the cases are remanded with directions to affirm the order of the Commission.*" 390 U.S. at 252, 253 (emphasis added).

Numerous cases have been disposed of by this Court in like manner. *Chicago & N.W. Ry. v. Atchison Topeka & Santa Fe Ry.*, 387 U.S. 326; *Illinois Central R.R. v. Norfolk and Western Ry.*, 385 U.S. 57, 75; *Consolo v. Federal Maritime Commission,* 383 U.S. 607, 621;

O'Leary v. Brown-Pacific-Maxon, Inc. 340 U.S. 504, 508; *Federal Trade Commission v. Cement Institute,* 333 U.S. 683, 730.

The record here presented is similar in all relevant aspects to these precedents. This case requires a similar resolution. Truly, here, justice delayed would be justice denied.

Respectfully submitted,

MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Counsel for Bowman Transportation, Inc.

SANDER W. SHAPIRO
JERRY C. PRESTRIDGE
Post Office Box 1148
Austin, Texas 78767

Counsel for Red Ball Motor Freight, Inc.

BRYCE REA, JR.
DONALD E. CROSS
700 World Center Building
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Counsel for Johnson Motor Lines, Inc.

CHARLES S. RHYNE
COURTS OULAHAN
400 Hill Building
Washington, D.C. 20006

ROBERT L. JONES, JR.
412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Counsel for Lorch-Westway Corporation, et al.

APPENDIX A

Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Determining Public Convenience and Necessity.

I. Locations of Facilities of Supporting Public Witnesses.

"Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest" specified in the following footnote as "specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas";

"340 shippers in the Southeast" specified in the following footnote as "Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia";

"44, collectively, in the Middle Atlantic and New England States" specified in the following footnote as "Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island";

"and 42 in the Midwest" specified in the following footnote as "Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri." 114 M.C.C. 592 (App. 122)

II. Range of Commodities Shipped by Supporting Shippers.

"[The traffic] consists of an extremely wide variety of commodities (the examiners categorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture." 114 M.C.C. 592 (App. 122)

III. Shipper Dissatisfaction with Existing Service.

A. "Approximately 650 shippers have complained about inconsistent and excessive transit times." 114 M.C.C. 596 (App. 126)

B. "[O]ver 200 introduced transit time studies demonstrating the undependable service they currently receive." 114 M.C.C. 596 (App. 126)

C. "About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic." 114 M.C.C. 596 (App. 126)

D. "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States." 114 M.C.C. 597 (App. 127)

E. "Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service." 114 M.C.C. 597 (App. 127)

F. "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service." 114 M.C.C. 597 (App. 127)

G. "The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts." (Approximately 80 shippers) 114 M.C.C. 598 (App. 128)

IV. Economic Study, Department of Transportation, University of Houston *re* areas served by applicant Johnson.

"The study develops the theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth." 114 M.C.C. 592 (App. 122)

V. Population Growth in States Where Supporting Shippers Located. Appendix F 114 M.C.C. 757 (App. 319)

APPENDIX B

Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Bowman Application.

1. "Bowman holds. . .authority. . .from, to, and between points in a territory bounded by Chicago, Ill., and points within 35 miles of Columbus Circle, N.Y. on the north; Miami and Pensacola, Fla., and Mobile, Ala., on the south; Memphis and Tuscaloosa, Ala., on the west, and points along the eastern seaboard." 114 M.C.C. 584 (App. 114)

2. "Bowman maintains 25 terminals, most of which are located in the Southeast. It proposes to establish [21 terminals and 3 agency stations in the points proposed to be served in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas]. Its fleet consists of 478 tractors, including 359 sleeper cabs, and 978 trailers." 114 M.C.C. 585 (App. 115)

3. "It proposes to render 1 or 2 day service generally between Chattanooga and Memphis, Tenn., and Birmingham and Gadsden, . . . Montgomery and Mobile, Ala., on the one hand, and, on the other, points in the territory it seeks to serve. Applicant introduced exhibits showing that on the 546 shipments moving from its Miami to its Atlanta terminals (744 operating miles) during a specified 1-week period in 1966, the average transit time was 1.9 days; that on the 321 shipments moving from its Birmingham

terminal during the same period and delivered or interlined at Charlotte (408 operating miles), the average transit time was 1.5 days; that on 206 shipments moving from its Richmond, Va., terminal to its Memphis terminal (855 operating miles) during the same period, the average transit time was 2.5 days; and that on 26 shipments handled from Birmingham to New York, N.Y. (1030 operating miles) during the 1-week period, the average transit time was 2.8 days." 114 M.C.C. 585, 586 (App. 115, 116

4. "...Bowman has persuasively demonstrated a need for its services between specified points in Mississippi, Kansas, Missouri, Arkansas, Louisiana, and Texas, on the one hand, and, on the other, those points in the Southeast and East that it presently serves." 114 M.C.C. 604 (App. 150)

5. "Approximately 135 witnesses in 13 States support that portion of Bowman's application seeking authority to serve the 10 specified Mississippi points. Over 100 of these have experienced difficulties with inadequate, inconsistent, and excessive transit times. The witnesses' transit time studies show that between 3- and 4-day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points, with transit times ranging between 1 and 7 days. From other points in the territory Bowman presently serves, transit times to Mississippi range from 3 to 21 days." 114 M.C.C. 604-605 (App. 150-151)

6. "Approximately 25 supporting witnesses have complained of either refusals by authorized carriers

to handle their traffic, and of carrier embargoes or restrictions; and about 50 have experienced pickup and delivery problems." 114 M.C.C. 605 (App. 151)

7. "Collectively, Deaton, Dixie, Campbell, Roadway, and Ryder [Protestants] are cited for refusing to handle a number of the supporting shippers' traffic to Mississippi from points in the Southeast." 114 M.C.C. 605 (App. 151)

8. "...two protestants to [the Bowman] application (Campbell and Herrin) withdrew their opposition." 114 M.C.C. 605 (App. 151)

9. "Approximately 80 witnesses support the Kansas-Missouri portion of Bowman's application. Over 60 of these complain about pickup and delivery problems, loss, damage, shortage, tracing difficulties, misrouting, interline problems, unsuitable or inadequate equipment, customer complaints, and lost business and penalties." 114 M.C.C. 606 (App. 152)

10. "[Protestants] Roadway and Transcon have declined to handle some of the supporting witnesses' traffic." 114 M.C.C. 606 (App. 152)

11. "Additionally, Bowman has shown that the present and future public convenience and necessity require the extension of its operations to points in the remaining States it proposes to serve." 114 M.C.C. 607 (App. 153)

12. "The evidence of the supporting witnesses establishes a clear and convincing public need for

single-line motor carrier service between the broad southeastern and eastern seaboard territory served by Bowman, on the one hand, and, on the other, the Arkansas points it proposes to serve. Approximately 100 witnesses supported this portion of Bowman's proposal. Many expressed a need for single-line service between the Arkansas points, on the one hand, and, on the other, points in Florida, Georgia, and the Carolinas (other than Birmingham, Atlanta, and Charlotte) for which no such service is available. Existing carriers which hold authority to operate between the Arkansas points and points which Bowman presently serves are limited territorily [sic] either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants propose such an extensive service." 114 M.C.C. 607-608 (App. 153-154)

13. "Similarly, the protestants are unable to provide the full scope of the single-line services proposed by this applicant between the Louisiana points. . .it proposes to serve and the territory it currently serves. Over 150 witnesses support this portion of Bowman's proposal, and they too have demonstrated material inadequacies in the transportation services they now receive." 114 M.C.C. 608 (App. 154)

14. "With respect to New Orleans, the approximately 30 shippers supporting this aspect of

Bowman's application have shown that the service they are receiving between specified points in Alabama and Tennessee, on the one hand, and, on the other, New Orleans, is not adequate." 114 M.C.C. 608 (App. 154)

15. "Regarding Texas, it is noted that more witnesses from the Dallas-Fort Worth area testified in support of Bowman's application than any of the other applicants. Also, witnesses from numerous points throughout Bowman's authorized territory testified in support of this portion of its application. Many of these shippers do not presently have single-line service to this important area, and none of the other applicants proposes to render the extensive single-line services to be proffered by Bowman." 114 M.C.C. 608 (App. 154)

16. "Many shippers. . .demonstrated. . .that they require the single-line service here authorized to be provided by Bowman, and that the lack of such service has been harmful to them." 114 M.C.C. 608 (App. 154)

APPENDIX C

Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Johnson Application.

1. "Johnson holds regular- and irregular-route ... authority to transport principally general commodities, with the usual exceptions. Its regular routes extend between points in a territory bounded by Boston and Worcester, Mass., and Niagara Falls, Oswego, and Glen Falls, N.Y., on the north, and Pensacola, Mobile, Pascagoula and Gulfport, Miss., and New Orleans, on the south, ... Applicant's irregular-route general-commodity authority extends generally to points in New York, New Jersey, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and Florida." 114 M.C.C. 586 (App. 116)

2. "Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted

to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route." 114 M.C.C. 587 (App. 117)

3. "The stated purpose of the . . . proposal is to permit service of an 'over-head' nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes." 114 M.C.C. 609 (App. 155) 114 M.C.C. 587 (App. 117)

4. "Applicant maintains about 35 terminals at principal points on its routes and in its irregular route territory. . . . Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport." 114 M.C.C. 586-587 (App. 116-117)

5. "Johnson operates approximately 500 tractors and 1,000 trailers . . . and it will add 50 tractors and 100 trailers to its fleet if its application is granted." 114 M.C.C. 587 (App. 117)

6. "Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by [Johnson] mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area . . . will break bulk at Charlotte, and move by two-man teams on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the

Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points." 114 M.C.C. 587-588 (App. 117-118)

7. "Additionally, Johnson has revised its operations and effective March 13, 1966, it commenced using two-man teams which would be utilized on a direct nonstop basis between Charlotte and the seven proposed terminal points here under consideration." 114 M.C.C. 611 (App. 151)

8. "[A]pplicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve.... At 33.3 miles per hour, the 816 miles between these terminals [Boston and Charlotte] would be traversed in 24.5 hours.... The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour." 114 M.C.C. 589 (App. 119)

9. "Its application is supported by 236 witnesses located throughout the area it serves or proposes to serve." 114 M.C.C. 609 (App.155)

10. "Their [the supporting witnesses'] testimony establishes that the existing service on small shipments traffic between the involved territories is generally inadequate. Many of the supporting witnesses validly complain with respect to lengthy and undependable transit times; and their studies,

considered on the whole, demonstrate that inconsistent and excessive transit times have been experienced on a substantial portion of the involved traffic. Complaints also were voiced by many of the shippers with respect to poor pickup and delivery service, tracing problems, and excessive loss and damage." 114 M.C.C. 609 (App. 155)

11. "Many of the shippers' problems can be attributed to the existing joint-line motor service.... Major east coast motor common carriers ... failed to participate in this proceeding; and it is therefore apparent that important segment ... of the involved joint-line motor carrier system does not oppose the Johnson application." 114 M.C.C. 609 (App. 155)

12. "Of the single-line protestants which serve between the points Johnson proposes to serve and its present territory, Ryder does not hold authority to serve the Dallas-Fort Worth area and much of the Carolinas; Roadway holds authority to perform the proposed 'over-head' service but its service was the subject of many of the shippers' complaints; and the authorities of T.I.M.E. and Transcon are limited to such an extent that they can provide only a portion of the service proposed by Johnson." 114 M.C.C. 609 (App. 155)

APPENDIX D

Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Red Ball Application.

1. "*The Southwestern applicants.* Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar." 114 M.C.C. 602 (App. 132)

2. "With respect to this latter category of applicants, it is our opinion that the evidence of record including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Refrigerated Xpress, Inc., Ext. -Denison, Iowa*, 96 M.C.C. 233, 237 (1964), is as follows: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. *Cf.* also *H.C. Gabler, Inc., Ext. -Cement from Md. and*

Pa. Counties, 86 M.C.C. 447, 469-470 (1961), and cases cited therein." 114 M.C.C. 602 (App. 132

3. "Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones;" 114 M.C.C. 602 (App. 132)

4. "The number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest;" 114 M.C.C. 602 (App. 132)

5. "...with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones;" 114 M.C.C. 602 (App. 132

6. "Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a) Herrin proposed 6 additional southeastern terminals, the reestablishment of a terminal at Little Rock, and would add 41 tractors, 80 trailers, and 67 trucks to its fleet, (b) Strickland proposes to establish 4 additional southeastern terminals, and (c) Jones proposes to establish terminals at 2 southeastern points (Atlanta and Birmingham) and at 2 southwestern points (El Dorado and Texarkana);" 114 M.C.C. 602-603 (App. 132-149)

7. "that Red Ball presented 130 supporting witnesses and an additional 23 witnesses specifically supported its application, whereas (a) Herrin presented 87 witnesses and an additional 11 supported its application, (b) Strickland presented 102 shipper witnesses, and an additional 24 supported its application, and (c) Jones presented 90 witnesses and an additional 117 supported its application;" 114 M.C.C. 603 (App. 149)

8. "Clearly, of the southwestern applicants, Red Ball has made the superior showing with respect to each of the above-described criteria, and, therefore, it is selected to receive the authority for which a public need has been found in this report." 114 M.C.C. 603 (App. 149)

9. "Moreover, none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the extensive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other the territory Red Ball now serves." 114 M.C.C. 603 (App. 149)

10. "Clearly, Red Ball is in a better position than Herrin to render this service." 114 M.C.C. 604 (App. 150)

APPENDIX E

REPORT AND ORDER OF ICC IN *HERRIN* APPENDIX G - PROTESTANTS EVIDENCE: TRANSIT TIME STUDIES

Consolidated	114 M.C.C. 759 (App. 321)
Watson-Wilson	*Id.* at 764-765 (App. 326-327)
Gordons	*Id.* at 768 (App. 330)
Mercury Freight	*Id.* at 771 (App. 333)
West	*Id.* at 773 (App. 335)
GFA	*Id.* at 775 (App. 337)
**Campbell Sixty-Six*	*Id.* at 777 (App. 339)
Jack Cole-Dixie	*Id.* at 778 (App. 340)
ETMF	*Id.* at 780 (App. 342)
Transcon	*Id.* at 782 (App. 344)
Roadway	*Id.* at 783 (App. 345)
United	*Id.* at 786 (App. 348)
Red Ball	*Id.* at 787 (App. 349)
Ryder	*Id.* at 788-791 (App. 350-353)

Appendix G sets forth the evidence of opposing carriers, as summarized by the Examiners. The further summary and evaluation of this evidence by the Commission appears at 114 M.C.C. 599 (App. 129).

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* Reference to data for "certain test periods" - dates and duration unspecified.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Appellees/Petitioners.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

PETITION FOR REHEARING

DON A. SMITH
THOMAS HARPER
P.O. Box 43
Fort Smith, Arkansas 72901
WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105
WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D.C. 20036
DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D.C. 20004
PHINEAS STEVENS
P.O. Box 22567
Jackson, Mississippi 39205
PHILLIP ROBINSON
P.O. Box 2207
Austin, Texas 78767
M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees/Petitioners

In the Supreme Court of the United States

OCTOBER TERM, 1973

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

PETITION FOR REHEARING

INTRODUCTION

This Petition for Rehearing is submitted jointly on behalf of all appellees/petitioners.[1] Mr. Justice Blackmun by order dated January 9, 1975, extended the time

1. Arkansas-Best Freight System, Inc.; Mercury Motors, Incorporated; Alamo Express, Inc.; Braswell Motor Freight Line, Inc.; Campbell Sixty-Six Express, Inc.; Central Freight Lines, Inc.; ET&WNC Transportation Company; Eagle Motor Lines, Inc.; Gordons Transports, Inc.; Holloway Motor Express, Inc.; Mercury Freight Lines, Inc.; Red Arrow Freight Lines, Inc.; Red Line Transfer & Storage Company, Inc.; T.I.M.E.-DC, Inc.; Transcon Lines; Yellow Freight System, Inc.; Roadway Express, Inc.; and Jack Cole-Dixie Highway Company.

for filing this petition to and including February 3, 1975. Petitioners respectfully pray that this Court grant this Petition for Rehearing and that this case be set down for reargument; or alternatively, that this case be remanded to the District Court for a determination of the substantiality *vel non* of the evidence.

This case is an appeal from a three-judge District Court which set aside and permanently enjoined an order of the Interstate Commerce Commission. The District Court held that the Commission's order was founded upon findings *and conclusions* that were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under §10(e) of the Administrative Procedure Act, 5 USC §706. Appellants contended here that the District Court erred in failing to apply the only test that could be properly applied by the District Court, that is, the substantial evidence test of §706(2)(E). Appellees/petitioners asserted that though the substantial evidence test was applicable, the arbitrary and capricious standard of §706 (2)(A) best described the errors committed by the Commission and that the latter test was properly applied by the District Court.

On December 23, 1974, this Court reversed the judgment of the District Court, holding that the Commission had not been in violation of the arbitrary and capricious standard. 43 U.S.L.W. 4091. The substantial evidence question was not reached because the Court felt that appellees had conceded that the findings "*and conclusions*" of the Commission were supported by substantial evidence.

Petitioners respectfully submit that the Court erred in stating that appellees petitioners made such a concession. This error appears twice in the opinion. Early in the opinion it was stated that:

> "The District Court properly concluded that, though an agency's finding may be supported by substantial evidence, based on the definition in *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (footnote omitted), it may nonetheless reflect arbitrary and capricious action. *There seems, however, to be agreement that the findings and conclusions of the Commission are supported by substantial evidence.* The question remains whether, as the District Court held, the Commission's action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' as provided in §10(e)(B)." 43 U.S.L.W. 4092 (Slip Opinion, at 3) (Emphasis added).

That the Court felt this "agreement" abrogated the need for any ruling on the substantiality of the evidence was further discussed by the Court at the end of its opinion. There the Court stated, in note 11:

> "At oral argument counsel for appellees *disposed* of any 'substantial evidence' objections to the Commission's order by conceding that 'we do not allege that any finding of fact is not supported by substantial evidence.' Tr. of Oral Arg. 25." 43 U.S.L.W. 4097 (Slip Opinion, at 17) (Emphasis added).

Petitioners respectfully submit that there was no concession that substantial evidence supported the order and further submit that the substantial evidence issue has never been ruled upon by either the District Court or by this Court. In addition, petitioners would respectfully suggest that the Court's view that appellees/petitioners felt there was substantial evidence doubtless flavored the Court's decision that the District Court erred in ruling that the Commission's action violated the arbitrary and capricious standard.

I.

There Was No Concession at Oral Argument That the Commission Order Was Supported by Substantial Evidence.

Appellees have never contended that the agency's findings of *fact* were incorrect. On the contrary, all factual issues were settled by the hearing examiners. The facts of record, as set forth in their report, have never been challenged by any party. Accordingly, all parties recognize that the recitals of *facts* in the agency's report are supported by substantial evidence. However, appellees have consistently maintained, on brief and at oral argument, that the actions and conclusions based upon such facts *were not supported by substantial evidence.* Section 706 states that if *either actions or conclusions* are found, *inter alia,* to be either arbitrary or capricious or unsupported by substantial evidence such agency action is to be set aside. Counsel for appellees made a clear distinction between *findings* and *conclusions.*

That the findings or recitals of *fact* are supported by substantial evidence does not mean that the *actions* and *conclusions* based upon those findings are supported by substantial evidence. Findings of fact and actions and conclusions based upon such findings are quite different matters. This statutory distinction was made by the District Court, *e.g.,* App. II, at 1308-1309, and at 1316-1317. Such a distinction was also made by counsel for the Government when he referred at oral argument to the ultimate conclusions and subordinate findings of the Commission. Tr. of Oral Arg. 7.

Petitioners suggest that the Court felt that petitioners made the concession in issue because of a misconstruction of the following statement of counsel for appellees/petitioners:

> "The findings of fact are not in issue. They have never been in issue. So we did not allege that any finding of fact *itself* was not supported by substantial evidence. We alleged that the treatment of these findings, the conclusions drawn from the findings lack the rational basis, they were arbitrary, they were capricious, they have constituted an abuse of discretion." Tr. of Oral Arg. 25 (Emphasis added).

Counsel was not conceding that there was substantial evidence. This is amply demonstrated by his subsequent statement that the facts were not in dispute; in dispute were the actions and conclusions drawn from those facts. Tr. of Oral Arg. 26. Necessarily, such conclusions apply both to the substantial evidence test as well as to the arbitrary and capricious test. Counsel went on to state that while the substantial evidence test certainly applied, the test best describing the error committed in this case was the arbitrary and capricious standard. He then stated that the District Court "could have reached every conclusion that it reached in terms of the substantial evidence rule." Tr. of Oral Arg. 27.

That there was no concession of substantial evidence is clearly demonstrated by the response of counsel to the following question:

> "If we disagree with the district court in terms of arbitrary—either disagree with it that it's applicable at all, the arbitrary and capricious test, or that even if it is there was nothing arbitrary and capricious about this order, the case is over as far as you are concerned." Tr. of Oral Arg. 27.

Counsel answered:

> "Not at all, your Honor. I would say that every finding or conclusion of the lower court could have

been expressed in terms of lack of substantial evidence." Tr. of Oral Arg. 27.

Furthermore, in response to extensive questioning of whether there was substantial evidence of need in the record, it was repeatedly stated that there was not. See Tr. of Oral Arg., at 27-30.

Appellants were well aware that notwithstanding the District Court's ruling on the arbitrary and capricious standard, the question of substantial evidence still remained. This is amply demonstrated by appellants' argument throughout that the substantial evidence standard was the only test that should have been applied to this case. See, *e.g.*, Tr. of Oral Arg., at 8, 20. See also Tr. of Oral Arg., at 9, where the Government argued that the District Court failed to "apply the substantial evidence test in this case." And see Tr. of Oral Arg., at 11, where the Government requested the Court to rule upon whether or not there was substantial evidence, rather than remand to the District Court to make that determination. The main statement in this respect appears in the Transcript of Oral Argument, at 12, where the question was asked:

> "Technically, you think then it would not be acceptable just to say the issue of substantial evidence isn't in the case. And then we either have to remand to determine it or determine it ourselves."

Counsel for the Government replied:

> "I believe that is correct, Mr. Justice White."

That the substantial evidence question had to be dealt with appears in the statement of a member of the Court that "a district court does have to make up its own mind as to whether there is substantial evidence, I suppose." Tr. of Oral Arg. 19. See also, Tr. of Oral Arg., at 20, where

a member of the Court noted that "[the district court has] got to decide whether [the evidence is] substantial."

Clearly, counsel for appellees made no concession that the Commission action was supported by substantial evidence. Moreover, such a concession would have clearly been at odds with the consistent position taken by appellees in the District Court and in their Brief in this Court. For example, at 9 of their brief, appellees/petitioners stated that "[i]n reaching its conclusions, the reviewing court did *not* find the actions and conclusions of the agency to be supported by substantial evidence . . . ."

II.

The Substantiality Vel Non of the Evidence Remains to Be Ruled Upon.

In its Opinion the District Court noted that the appellants here urged it "to confine its review to a determination of the substantiality" of the evidence. App. II, at 1309. Appellants sought to do the same in this Court and argued that the agency action was supported by substantial evidence. See, *e.g.*, Brief for Government, at 10, 11, 22-29; Brief for Private Appellants, at 14, 19, 30; Reply Brief for Private Appellants, at 14.

The question of whether or not the Commission order is supported by substantial evidence remains to be ruled upon. Because this Court felt appellees/petitioners at oral argument conceded the substantiality of the evidence, this Court stated that such a concession "disposed" of any need to reach this issue. No such concession was made, and thus the issue remains.

III.

This Case Should Be Set Down for Reargument, or in the Alternative, Should Be Remanded to the District Court for a Determination of Whether or Not the the Agency Action Is Supported by Substantial Evidence.

In light of the concession this Court felt appellees made, it was obviously easier for this Court to rule that the agency action involved in this case was not arbitrary or capricious. Therefore, because there was no concession, this case should be set down for reargument.

Alternatively, should this Court not desire reargument, this case should be remanded to the District Court for that court to rule upon whether or not the agency order was supported by substantial evidence.

CONCLUSION

This Petition for Rehearing should be granted, and this case set down for reargument; or alternatively, this case should be remanded to the District Court for a determination of whether the Commission's order is supported by substantial evidence.

Respectfully submitted,

DON A. SMITH
THOMAS HARPER
P.O. Box 43
Fort Smith, Arkansas 72901
WENTWORTH E. GRIFFIN
FRANK W. TAYLOR, JR.
1221 Baltimore Avenue
Kansas City, Missouri 64105
WILLIAM O. TURNEY
J. WILLIAM CAIN, JR.
2001 Massachusetts Ave., N.W.
Washington, D.C. 20036
DREW L. CARRAWAY
1111 E Street, N.W.
Washington, D.C. 20004
PHINEAS STEVENS
P.O. Box 22567
Jackson, Mississippi 39205
PHILLIP ROBINSON
P.O. Box 2207
Austin, Texas 78767
M. WARD BAILEY
2412 Continental Life Building
Fort Worth, Texas 76102

Counsel for Appellees/Petitioners

CERTIFICATE OF COUNSEL

I certify that this Petition is presented in good faith and not for delay.

FRANK W. TAYLOR, JR.
Counsel for Appellees/Petitioners

February, 1975

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOWMAN TRANSPORTATION, INC. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS

No. 73–1055. Argued November 20, 1974—
Decided December 23, 1974*

In 1969 hearing examiners for the Interstate Commerce Commission (ICC), following hearings in 1966 and 1967 and the subsequent filing of extensive briefs, rejected appellant motor carriers' applications for certificates of public convenience and necessity to transport general commodities between specified points in the Southwest and Southeast. In 1971 the ICC, over the opposition of appellee competing motor carriers, authorized the issuance of the certificates. Appellees then brought action in the District Court to set aside the ICC's order. The District Court refused to enforce the order on the ground that the ICC had acted arbitrarily in refusing to credit certain evidence introduced by appellees. *Held:*

1. The District Court erred in refusing to enforce the ICC's order. Pp. 3–12.

(a) Under the "arbitrary and capricious" standard the scope of review is a narrow one whereby a reviewing court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment," *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S. 402, 416. P. 4.

*Together with No. 73–1069, *Johnson Motor Lines, Inc.* v. *Arkansas-Best Freight System, Inc., et al.*; No. 73–1070, *Red Ball Motor Freight, Inc.* v. *Arkansas-Best Freight System, Inc., et al.*; No. 73–1071, *Lorch-Westway Corp. et al.* v. *Arkansas-Best Freight System, Inc., et al.*; and No. 73–1072, *United States et al.* v. *Arkansas-Best Freight System, Inc., et al.*, also on appeal to the same court.

Syllabus

(b) The ICC's observation that appellees' exhibits as to the acceptability of their existing service covered periods subsequent to the ICC's notice of hearing supported its refusal to credit this evidence. The ICC was entitled to regard such exhibits as non-representative of the usual service, to reason that the shortcomings were greater than the exhibits showed, and to conclude that service would be improved by granting the applications. Pp. 5–7.

(c) There was a rational basis for the ICC's attributing little significance to appellees' exhibits showing appellants' transit times over other routes. The question was whether service on the routes at issue would be enhanced by new entry and, as to this, performance by prospective entrants on other routes was of limited relevance. The ICC erred in not attributing the same qualification to appellants' transit time exhibits, but its finding that service would be improved by new entry was supported by other evidence. Pp. 8–10.

(d) The ICC's conclusion that consumer benefits of new entry outweighed any adverse impact upon the existing carriers reflects the kind of judgment that is entrusted to it, namely, the power to weigh the competing interests and arrive at a balance that is deemed "the public convenience and necessity." Pp. 10–12.

2. The lapse of time between the conclusion of evidentiary hearings and the ultimate agency decision in this case does not justify a reviewing court's requiring that the record be reopened. Pp. 12–15.

3. The ICC was entitled to take an approach, divergent from that of its examiners, favoring added competition among carriers. Pp. 15–17.

4. Whether or not the certificate granted appellant Bowman Transportation Co. conformed to the authority set forth in its application, an issue not briefed or argued in this Court, should be considered by the District Court on remand. Pp. 17–18.

364 F. Supp. 1239, reversed and remanded.

DOUGLAS, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 73–1055, 73–1069, 73–1070, 73–1071, AND 73–1072

Bowman Transportation, Inc., Appellant,
73–1055 *v.*
Arkansas-Best Freight System, Inc., et al.

Johnson Motor Lines, Inc., Appellant,
73–1069 *v.*
Arkansas-Best Freight System, Inc., et al.

Red Ball Motor Freight, Inc., Appellant,
73–1070 *v.*
Arkansas-Best Freight System, Inc., et al.

Lorch-Westway Corporation et al., Appellants,
73–1071 *v.*
Arkansas-Best Freight System, Inc., et al.

United States and Interstate Commerce Commission, Appellants,
73–1072 *v.*
Arkansas-Best Freight System, Inc., et al.

On Appeals from the United States District Court for the Western District of Arkansas.

[December 23, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a direct appeal from a final judgment of a three-judge District Court, 28 U. S. C. §§ 1253, 2101, invalidating an order of the Interstate Commerce Commission. Ten applications of motor carriers to conduct general commodities operations between points in the Southwest and Southeast were consolidated in one proceeding. Three additional applicants were allowed to intervene. The hearing examiners, after extensive hearings, rejected each application. The Commission granted three of the applications of appellant carriers. Appellees, competing carriers, brought an action in the District Court, 28 U. S. C. § 1336, to suspend, enjoin, and annul that portion of the order of the Commission that authorize issuance of certificates of public convenience and necessity to Red Ball, Bowman, and Johnson. The District Court refused to enforce the Commission's order because its findings and conclusions were arbitrary, capricious, and without rational basis within the meaning of the Administrative Procedure Act, 5 U. S. C. § 706, and likewise refused to remand the case believing that no useful purpose would be served, 364 F. Supp. 1239, 1264. The case is here on direct appeal, 28 U. S. C. §§ 1253, 2101.[1]

The Administrative Procedure Act in its § 10 (e)(2), 5 U. S. C. § 706 (2), provides that:

> "The reviewing court shall . . . hold unlawful and set aside agency action, findings and conclusions found to be—

[1] The hearings lasted over 18 months; this transcript covers 23,243 pages; there are 1989 exhibits; a total of 900 witnesses testified on behalf of 10 applicants; 66 rail and motor carriers entered appearances in opposition to the applications; 48 of the protestants offered evidence through 62 witnesses and numerous exhibits.

"(A) arbitrary, capricious, and abuse of discretion; and otherwise not in accordance with law [or] . . .

"(E) unsupported by substantial evidence . . . ."

These two provisions of § 10 (e)(2) are part of six which are "separate standards." See *Citizens to Preserve Overton Park* v. *Volpe*, 401 U. S. 402, 413. The District Court properly concluded that, though an agency's finding may be supported by substantial evidence, based on the definition in *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474,[2] it may nonetheless reflect arbitrary and capricious action. There seems, however, to be agreement that the findings and conclusions of the Commission are supported by substantial evidence. The question remains whether, as the District Court held, the Commission's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" as provided in § 10 (e)(B). We disagree with the District Court and accordingly reverse its judgment and remand the cases for consideration of one issue not reached by the District Court nor by this Court.

I

The Motor Carrier provisions of the Interstate Commerce Act, 49 U. S. C. § 307, empower the Commission to grant an application for a certificate if it finds that (1) the applicant is "fit, willing, and able properly to perform the service proposed"; and (2) that the service proposed "is or will be required by the present or future public convenience and necessity." The Commission made both findings, relying upon the applicants' general

[2] "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." 340 U. S., at 488. And see 4 Davis, Administrative Law Treatise § 29.03, at 129 (1958), Jaffee, Judicial Control of Administrative Action (1965), p. 601.

service record in support of a finding of fitness, and upon expressions of customer dissatisfaction with the existing service in support of its conclusion that the service proposed was consistent with the public convenience and necessity. The competing appellee carriers made presentations designed to show that their existing service was satisfactory and that the applicants would not offer measurably superior performance. The District Court concluded that the Commission had acted arbitrarily in its treatment of the presentations made by the protesting carriers. While the Commission had acknowledged the appellees' evidence, its reasons for refusing to credit it would not, in the District Court's view, withstand scrutiny, making its action tantamount to an arbitrary refusal to consider matters in the record.

Under the "arbitrary and capricious" standard the scope of review is a narrow one. A reviewing court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. . . ." Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Citizens to Preserve Overton Park* v. *Volpe*, *supra*, at 416. The agency must articulate a "rational connection between the facts found and the choice made." *Burlington Truck Lines* v. *United States*, 371 U. S. 156, 168. While we may not supply a reasoned basis for the agency's action that the agency itself has not given, *SEC* v. *Chenery Corp.*, 332 U. S. 194, 196, we will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned. *Colorado Interstate Gas Co.* v. *FPC*, 324 U. S. 581, 595. Having summarized the appropriate scope of review, we proceed to consider the District Court's objections seriatim.

A. Evidence as to Existing Service

The applicant carriers presented exhibits showing the time in transit of selected shipments that had been consigned to appellee carriers by particular shippers during a designated study period. As the Commission acknowledged, the selection of particular shipments from those occurring during the study period had been made with an eye toward demonstrating service inadequacies.[3] These "worst case" studies figured in the Commission's finding that service would be improved by the entry of new carriers to the routes at issue.

The appellee carriers offered studies of their own. These covered the same period and the same shippers as the applicants' presentations, but whereas the applicants had selected particular shipments to emphasize inadequacies, the appellee carriers included in their presentations all of the shipments consigned during the study period. These exhibits, argued the protesting carriers, placed the incidents cited by the applicants in perspective and demonstrated that the existing service was generally acceptable. The Commission acknowledged the appellees' presentations but concluded that they offered an inadequate rebuttal to the applicants' exhibits because (1) they "related to short periods of time or cover traffic handled for specified shippers"; and (2) the studies represented service provided by appellees after the Commission had designated the applications for hearing. 114 M. C. C., at 599. The District Court ruled that the Commission had applied inconsistent standards in reviewing the evidence of the parties, since the apellees' exhibits

[3] The Commission stated: "Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period, and some include shipments which were listed because complaints were received on this traffic." *Herrin Transportation Co.*, 114 M. C. C. 571, 596.

were based upon the same study periods and the same shippers as the applicants' exhibits. 364 F. Supp., at 1259–1260.

We agree with the District Court that the first reason assigned by the Commission—that the appellees' exhibits were based only upon short periods and particular shippers—failed to distinguish the presentations of applicants and opponents. To counter the applicants' presentations, the protesting carriers chose the identical study periods and shippers but expanded the presentation to show all the shipments consigned. Since the protesters confined themselves to the periods and shippers the applicants had selected, there was no basis for an inference that the former had chosen so as to make the exhibits unrepresentative in their favor.

The Commission's second reason, however—that the appellees' studies covered periods subsequent to a notice of hearing—provides support for the Commission's assessment of the evidence. The Commission recognized that protesting carriers might have been spurred to improve their service by the threat of competition raised by the designation of applicants for hearing. Therefore, reasoned the Commission, the protesting carriers' performance subsequent to the notice of hearing might be superior to the service they normally offered, and their exhibits, covering those periods, had to be read in light of that possibility. But the Commission was not preclud from relying upon the demonstrated shortcomings of the protesters' service during that period, for the incentive effect the Commission identified would have, if anything, distorted the performance studies in the protesters' favor.

The issue before the Commission was not whether the appellees' service met some absolute standard of performance but whether the "public convenience and necessity" would be served by the entry of new carriers to the mar-

kets served by appellees. *Dixie Highway Express* v. *United States*, 389 U. S. 409, 411–412. Even if the Commission had accepted appellees' exhibits at face value, it could still have concluded that the deficiencies were sufficient to justify the admission of additional carriers. Certainly the Commission was entitled to regard the appellees' studies as possibly nonrepresentative of the usual service afforded,[4] to reason that the shortcomings were probably greater than these studies showed, and to conclude that service would be improved by granting the applications.

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[4] The District Court also ruled that since there had been no suggestion during the evidentiary hearings that performance studies subsequent to notice of hearing might not be viewed as representative, the appellees had been denied fair notice of the standards by which their evidence would be judged. 364 F. Supp., at 1260. We disagree. A party is entitled, of course, to know the issues on which decision will turn and to be apprised on the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation. *Ohio Bell Telephone Co.* v. *Public Utilities Comm'n*, 301 U. S. 292; *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274. But these salutary principles do not preclude a factfinder from observing strengths and weaknesses in the evidence that no party identified. If the examiners had raised the qualifications to appellees' evidence the Commission later interposed, there would have been no basis for suggesting unfairness. See *American Trucking Associations* v. *Frisco Transportation Co.*, 358 U. S. 133, 144. The situation is not altered by the fact that the Commission parted company with the examiners. Even as to matters, such as the credibility of witnesses, where the examiner is thought to have an advantage, the reviewing agency is not rigidly barred from taking a contrary position. *Universal Camera, Inc.* v. *NLRB*, 340 U. S. 474. We perceive no reason for binding an agency to the experience and viewpoint of the examiner in the interpretation of studies in the record. Appellees are not in a position to claim unfair surprise. The Commission offered the identical rationale in interpreting transit-time studies in a case decided just as hearings in this case began. See *Braswell Motor Freight Lines*, 100 M. C. C. 482, 493–494. Appellees offered their studies knowing that the Commission might interpose qualifications.

B. Evidence of Applicants' Fitness

The applicants supported their service proposals with exhibits showing transit times over comparable distances on other routes. The appellees once again pointed out that the applicants had been selective, and offered transit time on different routes served by the applicants that were substantially longer than those applicants proposed to provide on the routes at issue. Appellees thus argued that the applicants could not reasonably be expected to live up to their service proposals. In addition, the appellees cited service restrictions that the applicants practiced on other routes—refusal to make scheduled pickup of merchandise, refusal to handle shipments less than a certain weight, refusal to transport goods to certain destinations, and the like.

The Commission attributed little significance to the appellees' rebuttal. With respect to transit times, the Commission noted that different highway conditions might make transit times over identical distances totally incomparable. 114 M. C. C., at 611. The District Court held that the Commission had acted arbitrarily in so treating the evidence, for it had apparently relied on the applicants' transit time evidence (114 M. C. C., at 586, 600) to support its finding of fitness. 364 F. Supp., at 1260–1261. Similarly, the District Court viewed as arbitrary the Commission's failure to mention in its opinion the service restrictions by applicants that appellees' had cited, since the Commission had relied upon identical restrictions practiced by appellees to support its finding that existing service was not satisfactory. 114 M. C. C., at 600.

The Commission's treatment of the evidence of the applicants' performance on other routes is not a paragon of clarity. Had the Commission responded in a more considered manner to the evidence appellees presented,

review would have been greatly facilitated, and review by this Court perhaps avoided entirely. But we can discern in the Commission's opinion a rational basis for its treatment of the evidence, and the "arbitrary and capricious" test does not require more. The issue before the Commission was whether service on the routes at issue would be enhanced by permitting new entry and as to this the performance by prospective entrants on new routes was of limited relevance. The Commission noted with respect to transit times that different highway conditions might make experience there a poor indication of the times applicants could provide on the routes they sought to enter. More generally, the applicants' performance on other routes might, because of market conditions peculiar to that route (*e. g.*, the nature of demand for service, or the number of competing carriers, for example) offer an inaccurate basis for predicting what the applicants would do if admitted to the routes they sought in competition with the carriers already there. A carrier performing lethargically on a route where it was the sole provider of motor transportation, for example, could ill afford to continue the same practice where the situation was more competitive.[5]

The particular features of the applicants' performance elsewhere that the appellees cited were not shown by the Commission to be explainable by special market conditions on the routes where they occurred. It is said that the Commission could conclude that the evidence of per-

[5] We thus distinguish the case where a firm already in possession of a franchise that offers a high degree of protection from competition seeks its renewal. Cf. *Office of Communications, United Church of Christ* v. *FCC*, — U. S. App. D. C. —, 359 F. 2d 994, 1007 (1966) ("history of programming misconduct . . . would preclude . . . the required finding that renewal of the license would serve the public interest").

formance elsewhere would be unlikely to prove dispositive, and that accordingly, absent some compelling demonstration by a proponent of a "performance elsewhere" study that it offered important predictive value, the Commission should disregard such evidence.[6] Of course, evidence of especially egregious performance elsewhere might have been viewed as an exception; a general assumption that competition would force new entrants to exceed the pre-existing quality of service in an effort to attract business might have to yield in the face of an applicant whose shortcomings elsewhere were many and flagrant. But no such evidence was offered here, and none of the applicants were so characterized. Indeed the examiners found that "in the main the carriers participating in these proceedings are substantial and responsible carriers," (JA 878) and no party has disputed this finding. We do not find the Commission's treatment of the evidence arbitrary.

II

Having found that the admission of the applicant carriers to the routes they sought would produce benefits to the consumers served, the Commission proceeded to

[6] Fairness as well as rationality, however, command evenhanded application of such a rule. The Commission should not have cited applicants' "performance elsewhere" presentations without noting appropriate qualifications. Compare 114 M. C. C., at 586, with *id.*, at 611. Yet in view of the examiners' undisputed conclusion that all carriers were "substantial and responsible," there was adequate remaining basis for the Commission's finding of the applicants' fitness. And the service benefits the Commission anticipated from new entry included, not merely a possibility of improved transit times, but many other improvements in service quality. The Commission identified as service deficiencies that would be removed by new entry the following: "restrictions or embargoes [or] outright refusals be existing carriers to handle . . . shipments"; "pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting. . . ." 114 M. C. C., at 600.

consider the effect of new entry upon the appellees. While the Commission acknowledged that competition from new entrants might cause at least short-run business losses for existing carriers, it found that, with the exception of one carrier, none would be "seriously adversely affected." Further, the Commission concluded that in any event, "the gains to be derived by the shipping public far outweigh any adverse effect this carrier or any other protestant may experience." 114 M. C. C., at 611.

The District Court thought the Commission's treatment unsupportable, in view of the findings by the hearing examiners as to adverse impacts if the applications were granted. 364 F. Supp., at 1262–1263. Insofar as the District Court's comments express the view that the Commission failed to consider the examiners' findings or the appellees' interests, the record shows otherwise. The Commission stated in its opinion that "grants of authority will subject some of protestants' traffic to diversion," but went on to make findings that there would be no "serious adverse impact." 114 M. C. C., at 610–611.

The evidence that moved the examiners to a contrary view consisted of testimony by appellees' witnesses about the volume of shipments for which new entrants would compete if allowed to enter the market. The testimony thus presented the carriers' maximum potential exposure, leaving considerable leeway for predicting what was likely if applications were granted. Cf. *Market Street R. Co.* v. *Railroad Comm'n*, 324 U. S. 548. The examiners emphasized the magnitude of potential harm; the Commission took a more optimistic view. We see nothing arbitrary in this posture. That a carrier's entire business will be subject to competition hardly compels the conclusion that its operations will show no profit. It was rational for the Commission so to conclude that the new entrant may be expected not to swallow up existing carriers, especially if the latter make efforts to attract

business. Moreover, the testimony offered by appellees' witnesses gave the carriers' exposure to competition if every new application sought by appellees were granted.[7] Thus, the examiners were reporting upon potential diversions of traffic under conditions that were never realized. Since the Commission granted only three of the 10 pending applications, much of the testimony on this matter had to be regarded with qualification, and some of it disregarded entirely.[8]

The Commission's conclusion that consumer benefits outweighed any adverse impact upon the existing carriers reflects the kind of judgment that is entrusted to it, a power to weigh the competing interests and arrive at a balance that is deemed "the public convenience and necessity." *United States* v. *Pierce Auto Lines*, 327 U. S. 515, 535–536. If the Commission has "drawn out and crystallized these competing interests [and] attempted to judge them with as much delicacy as the prospective nature of the inquiry permits," *ICC* v. *J–T Transport*, 368 U. S. 81, 89, we can require no more. Here the Commission identified the competing interests. We cannot say that the balance it struck was arbitrary or contrary to law.

III

The District Court expressed concern about the considerable lapse of time between the conclusion of evidentiary hearings and the Commission's decision. 364 F.

[7] Each carrier presented the possible diversion of traffic that would result if the applications it was opposing were granted. In many cases, the protesting carrier was opposing applications not ultimately granted by the Commission. See, *e. g.*, Examiners' Decision, App. D, at 6, 13, 14, 19, 24, 25, 34, 35, and 48.

[8] The same must be said of the examiners' concern that service to small communities might be adversely affected by granting all the applications, since these fears derived from those about impact upon protesting carriers.

Supp., at 1261–1262. While it is unclear whether this was an independent ground for setting aside the Commission's order, we deem it advisable to deal directly with the suggestion that the record has grown too stale to support the order.

Hearings on the applications in these cases began in 1966 and concluded in 1967. Thereafter, the parties prepared extensive briefs for the examiners, who rendered their decision in November 1969. The decision of the Commission was handed down on December 30, 1971. Thus, the evidentiary material pertained to service conditions which were dated by five years at the time the Commission rendered its decision.

We appreciate the difficulties that arise when the lapse between hearing and ultimate decision is so long. Undoubtedly economic changes dated the 1966 studies that the parties, both applicants and appellees, had placed in the record. Nevertheless, we have always been loathe to require that factfinding begin anew merely because of delay in proceedings of such magnitude and complexity. To repeat what was said in *Interstate Commerce Comm'n* v. *Jersey City*, 322 U. S. 503, 514:

> "Administrative consideration of evidence—particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it—always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that

> the administrative process could ever be consummated in an order that would not be subject to reopening. It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that the discretion to be invoked was that of the body making the order, and not that of a reviewing body."

Only in *Atchison, T. & S. F. R. Co.* v. *United States*, 284 U. S. 248, did we remand a case for reopening of evidentiary proceedings; there the Commission's refusal to reopen in light of the economic metamorphosis brought on by the Great Depression led the Court to find an abuse of discretion. The same exceptional circumstances that compelled that disposition, however, have been found lacking in more recent cases. See *United States* v. *Northern Pacific Ry.*, 288 U. S. 490; *ICC* v. *United States*, 292 U. S. 474; *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38; *ICC* v. *Jersey City, supra; United States* v. *Pierce Auto Lines*, 327 U. S. 515; *Northern Lines Merger Cases*, 396 U. S. 491. *ICC* v. *United States, supra*, is of particular relevance, for there the Court refused to compel the Commission to reopen for the inclusion of new economic studies a record already closed for a comparable period. We believe appellees failed to meet the heavy burden thrust upon it by our cases.[9]

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[9] Much is made, for example, of the Commission's failure to notice a number of terminal closings by appellant Red Ball that had occurred since evidentiary proceedings had concluded. 364 F. Supp., at 1261. The Commission, however, cited the number of Red Ball terminals—reduced by intervening events—only in support of its conclusion that Red Ball, rather than three other carriers, should be certificated to offer new service. 114 M. C. C., at 603. Since these three carriers are not among appellees, we have doubt that appellees can show substantial prejudice from the Commission's failure to update the information.

The protracted character of the proceedings resulted, not from bureaucratic inertia, but from the number and complexity of the issues and from the agency procedures that extended to the parties, in an effort to insure fairness in appearance as well as reality, an opportunity to comment upon the proceedings at every stage. More than 900 witnesses testified in the original hearings, which consumed 150 days. At the conclusion the parties submitted briefs requiring seven months to prepare. The examiners' decision did not issue until nearly two years later. It is doubtful that the Commission could have made the record more current by judicial notice alone; while live testimony might not have been required, the Commission would at least have had to entertain evidence in affidavit form. Yet there would have been little assurance that at the conclusion of such a reopening, and the time required to digest the new material, the record would not again have become "stale." Accordingly, we conclude that there is sound basis for adhering to our practice of declining to require reopening of the record, except in the most extraordinary circumstances.

IV

We conclude by addressing a concern voiced by the District Court, that the Commission' decision

> "indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such a conclusion."

We disagree with the District Court insofar as its remarks charge the Commission with prejudging the issue and deciding without giving consideration to the evidence. But we think the approach adopted by the Commission does differ from that taken by the examiners in significant respects that are important to identify.

The examiners viewed the evidence against a backdrop of assumptions about the relationship between consumer needs and carrier responsibilities. The examiners ruled, for example, that all shippers were not entitled to "single-line service" and that the shippers' difficulties were attributable, in part, to lack of diligence. The examiners put it that

> "Normally existing carriers should have the opportunity . . . to transport all of the traffic they can handle adequately and efficiently in the territory they are authorized to serve without the competition of new operations."

And to the extent that service inadequacies were demonstrated, the examiners viewed complaints to force compliance with certificates held by existing carriers as a preferred mode of relief.

The Commission's approach, on the other hand, was more congenial to new entry and the resulting competition. This is the Commission's prerogative in carrying out its mandate to insure "safe, adequate, economical, and efficient service," 49 U. S. C. § 1. The Commission was not compelled to adopt the same approach as the examiners. It could conclude that the benefits of competitive service to consumers might outweigh the discomforts existing certificated carriers could feel as a result of new entry.[10] Our decisions have dispelled any notion that the Commission's primary obligation is the protection of firms holding existing certificates. *ICC* v. *J–T Transport, supra,* disapproved the proposition that ship-

[10] In commenting upon the perceived lack of diligence by the shippers in seeking out service, the examiners rejected the notion that "the burden is upon carriers to inform shippers of their services through personal solicitation." The Commission, however, would have been free to conclude that greater promotional effort by carriers, brought about through competition, might most economically facilitate the matching of services to needs.

pers must take their grievances through complaint procedures before improvement through new entry is permitted. 368 U. S., at 91. And in *United States* v. *Dixie Express*, 389 U. S. 409, we rejected the suggestion by a reviewing court that existing carriers have "a property right" to an opportunity to make amends before new certificates issue. *Id.*, at 411.

A policy in favor of competition embodied in the laws has application in a variety of economic affairs. Even where Congress has chosen government regulation as the primary device for protecting the public interest, a policy of facilitating competitive market structure and performance is entitled to consideration. *McLean Trucking Co.* v. *United States*, 321 U. S. 67; *FMC* v. *Svenska Amerika Linien*, 390 U. S. 238; *Gulf States' Utilities Co.* v. *FPC*, 411 U. S. 747; *Denver & R. G. W. R. Co.* v. *United States*, 387 U. S. 485. The Commission, of course, is entitled to conclude that preservation of a competitive structure in a given case is overridden by other interests, *United States* v. *Drum*, 368 U. S. 370, 374–375, but where, as here, the Commission concludes that competition "aids in the attainment of the objectives of the national transportation policy," *McLean Trucking Co.* v. *United States, supra*, 321 U. S., at 85–86, we have no basis for disturbing the Commission's accommodation.

V

Our opinion disposes of appellees' objections to the Commission's order insofar as it granted the applications of Johnson and Red Ball.[11] As to appellant Bowman, however, an issue remains. In granting Bowman a certificate the Commission noted that the authority sought by

[11] At oral argument counsel for appellees disposed of any "substantial evidence" objections to the Commission's order by conceding that "we do not allege that any finding of fact is not supported by substantial evidence." Tr. of Oral Arg. 25

Bowman exceeded that set forth in Bowman's application. The "excess" was granted, subject to a condition precedent of publication in the Federal Register of Bowman's request for the excess authority. Various appellees filed objections to the augmented authority sought by Bowman, which the Commission overruled. Appellees challenged the Commission's procedure in the District Court on a variety of grounds, and though the District Court indicated disapproval of the Commission's action, the court did not have to rule on the merits of appellees' objections since it set aside the Commission's approval of all the applications.

While we have on occasion decided residual issues in the interest of an expeditious conclusion of protracted litigation, see *Consolo* v. *FMC*, 383 U. S. 607, 621, we believe that the issue of conformity of the Bowman certificate to its application is one for the District Court. The issue was not briefed or argued here, owing to the limitations set forth in our order noting probable jurisdiction. And while the District Court spoke of the Commission's action in this regard, we do not construe its expressions as a final ruling, since they were unnecessary to the District Court's disposition of the case. Accordingly, the issue remains open on remand.

We hasten to add, however, that our remand provides no basis for depriving Bowman of authority conferred by the Commission that was within its original application.

Reversed and remanded.